

LEGISLATIVE REFORMS IN TURKEY BETWEEN 1998-2005 IN THE
CONTEXT OF GENDER MAINSTREAMING

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ABSTRACT

LEGISLATIVE REFORMS IN TURKEY BETWEEN 1998-2005 IN THE CONTEXT OF GENDER MAINSTREAMING

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The main aim of the thesis is to investigate the process of the legislative reforms in Turkey between 1998 and 2005 in the context of gender mainstreaming. To illustrate the process, descriptively, the actors behind the amendments in the Turkish Constitution, Civil Code, Penal Code, Labor Law and the Law on the Protection of the Family are investigated based on the "Gender and Development" approach. The thesis exposes that international organizations (EU and UN), women's activism and state are incredibly influential in the process of the legislation stage of gender mainstreaming. The legislation stage of gender mainstreaming has been almost eventuated in Turkey, however, the second stage, which is institutionalization stage, has just started to be implemented.

Keywords: Equality Policy, Gender Mainstreaming, Legislation

ÖZ

TÜRKİYE’DE TOPLUMSAL CİNSİYET ANA AKIM POLİTİKASI BAĞLAMINDA 1998- 2005 YILLARI ARASINDA YASAL REFORMLAR

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Yüksek Lisans, Kadın Çalışmaları Ana Bilim Dalı

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Bu çalışmanın temel amacı 1998 ve 2005 yılları arasında toplumsal cinsiyet anaakım politikası bağlamında Türkiye’de yasal reform sürecini incelemektir. Sürecini belirtmek için, Türk Anayasası, Medeni Kanunu, Ceza Kanunu , İş Kanunu ve Aileyi Koruma Kanunu’ndaki değişikliklerin arkasındaki aktörler “Toplumsal Cinsiyet ve Kalkınma” yaklaşımı bağlamında incelenmiştir. Tez, uluslararası örgütlerin, kadın aktivizminin ve devletin toplumsal cinsiyet ana akım politikasının yasalaşma aşaması sürecinde oldukça önemli olduğunu ortaya koymaktadır. Toplumsal cinsiyet eşitliği ana akım politikasının yasalaşma aşaması Türkiye’de büyük oranda gerçekleşmiştir, fakat, kurumsallaşma aşaması olan ikinci aşaması uygulanmaya yeni başlamıştır.

Anahtar Kelimeler: Eşitlik Politikası, Toplumsal Cinsiyet Ana Akım Politikası, Yasallaşma

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CHAPTER 1

INTRODUCTION

The main aim of this thesis is to describe the process of gender mainstreaming within the context of the legislative reforms from 1998 to 2005 in Turkey. Since 1998, there have been significant changes in the Turkish laws regarding gender equality. The significance of this study is to shed light on the actors behind the changes and their conjectures that have shaped the legislative reforms made between 1998 and 2005 in the context of gender mainstreaming.

The term of gender mainstreaming is assessed by two stages in the thesis. These are “legislation stage” and “institutionalization stage”. This categorization has been made in the light of the discussions of the term in the literature as well as the discussions in the area of politics in Turkey. In this thesis, the legislation stage of the gender mainstreaming process is taken as the primary focus, since it is the first stage of mainstreaming the gender equality, at the same time it is the origin of the institutionalization stage as well.

As the conceptualization of gender mainstreaming process through the legislative reforms, which were made between 1998 and 2005, is the main research topic of this thesis, the amendments in the laws will be described and analyzed. The gender mainstreaming and its origin will be introduced to clarify the process. While this process has been influenced by three different associated actor groups (international organizations, women’s NGOs and state), their interrelationship will be described to exhibit their impact during the process of the legislative reforms of gender equality. In the thesis, these three actor groups are named as “three-legged correspondence”. Also, it is argued that the legislative reforms between 1998 and 2005 have been made through this “three-legged correspondence” including international organizations, women’s movement and state stance within

the conceptualization of gender mainstreaming policy in Turkey. While describing the process of legislative reforms, the targets and consequences of these reforms in the gender mainstreaming will be depicted through the analysis of the effects of three actor groups.

Before describing the process of legislative reforms of gender equality in Turkey, it is necessary to look at how the gender mainstreaming comes into being in the literature. Appearing first in the literature of United Nations (UN) as a term, gender mainstreaming is an international phenomenon which originated in development policies and international conferences. It is a process for the advancement of gender equality by revising all policy areas and it is a way of improving the effectiveness of major road policies. The initial development of gender mainstreaming by feminist development practitioners in 1970s was intended to make visible the gendered nature of assumptions, outcomes and processes.

Historically, the equality between men and women or gender mainstreaming in the UN discourse emerged primarily as an economic concept arising from the necessity of women labor in the market. From the modernization perspective, every individual is assumed to be equal in the market. Therefore, men and women are equal and this equality also supports the modernization and development in the reproduction process. Categorization of “women” began to take place in the development approaches first with “Women in Development” and it was followed by “Women and Development” and lastly “Gender and Development”, which has shaped gender mainstreaming. This thesis argues that the process of legislative reforms between 1998 and 2005 concerning the equality of men and women is the first stage of the gender mainstreaming in Turkey. Hence, those three development approaches help us to understand how those reforms have been shaped.

“Women in Development” (WID) was born out of the discovery of the modernization programmes pursued by the UN in the “Decade of Development”

(1961-70). Parisi (2002) finds the origin of the WID in the “Modernization Theory”. According to her, modernization theory conjectured that many Third World countries were covered in economic development because they were traditional, that is to say, they are authoritarian, rural and male dominated. In theory, to achieve ‘modernity’, societies must move towards egalitarianism, urbanization, democratization and enable individual agency. As it is explained in the thesis, the aim of most of the amendments in the laws between 1998 and 2005 in Turkey (Penal Code, Civil Code and the Law on the Protection of the Family) was to cut through the traditional, authoritarian, rural and male dominated society in order to reach a modern and an egalitarian society. Also, the role of international organizations in the process of legislative reform can be evaluated in the WID approach within the economical and modernization approach. This literature contends that the ‘benefits’ of modernization often did not extend to women, and in some cases served to widen the scope of their marginalization. It was a way of adapting modernization theory to the development programmes. According to Parisi, liberal feminists believed that if women were integrated into development programmes, these programmes would enhance women’s roles as producers, hence the name of “Women in Development”. That is, according to WID perspective, integrating women into development programmes rather than their exclusion leads to a greater prosperity, equality and empowerment of individuals. However, this perspective receives some negative criticism due to its deficiencies. For instance, Hoşgör criticizes WID approach for focusing only on the relationship between modernity and tradition and not dealing with the gender structures (Hoşgör, 2001).

Transition from WID to Women and Developments (WAD) depends on another deficiency of the former, namely the neglect of the issue of class. Neo-Marxist feminists argued that WID did not adequately address the role of capitalist economic relations; it promotes inequality between classes of women and gender inequality within classes. According to Parisi (2002), neo-Marxist feminists emphasize misplacement of putting women into development strategies. Accordingly, “the emphasis should be on *how* women had been integrated into

development, *how* they related to development, and *how* these development practices sustained global structures of inequality” (p: 575). Therefore this approach is expressed under the name ‘women and development’ (WAD). As Parisi states, understanding the relationship between women and economic development with WAD strategies urged that women’s unpaid and voluntary labour was an essential component to the persistence of these unequal community structure. In this regard, the root of some amendments in the Civil Code, making the woman’s unpaid and invisible labor in the family paid and visible, goes back to the WAD approach. In addition, Hoşgör puts WAD into the feminist-Marxist approach focusing on women’s economic roles and class divisions. Nonetheless, she criticizes WAD approach for ignoring women’s domestic role at home and for the overemphasis of class (Hoşgör, 2001).

In time, WID and WAD strategies began to be displaced by the ‘Gender and Development’ (GAD) approach. Compared to two other approaches, GAD is a more holistic approach. It aims at the examination of all areas of women’s lives. Not only does GAD approach deal with gender roles of different sexes and their transformation, but it also aims at transforming the dichotomy of public and private distinction. GAD emphasizes the need for women’s self-organization for political change and it rejects the idea of women being the passive recipients of development assistance. In addition, the term “Gender Mainstreaming” originates from this approach. According to Parisi (2002), GAD is a ‘bottom up’ development strategy instead of ‘top down’. In this sense, women’s organizations began to be formed to advocate for themselves. At the same time, it is also important for GAD approach that the state is responsible for providing resources for promoting women’s empowerment.

In this thesis, following the literature review, one of the key terms of the thesis, in the second chapter “Gender Mainstreaming” is evaluated within its historical process. The origin of the terms in the UN and EU is analyzed in terms of producing and shaping the term and the discussions and evaluations around the issues will be outlined to understand the processes in Turkey. In the third chapter,

the legislative reforms in Turkey will be investigated. The legislative reforms concerning the gender equality from 1998 to 2005 will be dealt with in this chapter. The Turkish Constitution, the Turkish Civil Code, the Turkish Penal Code, the Labor Law and finally the Law on the Protection of the Family are analyzed and evaluated in this section. Lastly, in the fourth chapter, the actors of the legislative process (international organizations, women's NGOs and state) will be evaluated. The "three-legged correspondence" forms the most important basis for the discussions on gender mainstreaming and the relevant legislative reform processes, and each group in this correspondence has a distinct importance in that process. The specific role and impact of each actor in the process will also be described in this chapter.

In the fourth chapter, firstly, the international organizations (the UN and EU) part of the "three-legged correspondence" will be explored as both of these international organizations have a considerable impact on Turkish policy. When the UN history is explored, it is seen that the discourse of gender mainstreaming first appeared in the UN Conferences, in which Turkey has also participated (Mexico, 1975; Copenhagen, 1980; Nairobi, 1985; Beijing 1995). These Conferences were finalized with critical commitments and conventions. Turkey also signed these vital commitments related to gender equality. To this end, the "Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW) remains one of the most important outcomes of the UN. In 1985, Turkey signed the Convention with reservations to paragraphs 2 and 4 of Article 15¹ and paragraphs c, d, f and g of Article 16². These reservations continued until

¹ Article 15, 2nd paragraph; States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals, 4th paragraph; States Parties shall accord to men and women the same rights with regard to the movement of persons and the freedom to choose their residence and domicile.

² Article 16, (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

1999. Despite these reservations, signing of the Convention demonstrates the UN's important role on the Turkish legislative reforms for gender equality.

Nairobi (1985) and Beijing (1995) conferences are also the most significant women's conferences for Turkey in the process of preparing the background for the gender mainstreaming. Nairobi Conference was the first platform ever to provide the countries for institutionalization of the gender equality in their own policy making. On the other hand, Turkey's efforts for legislative reforms for gender equality were triggered with the Beijing Conference. In the Beijing Conference in 1995, Turkey accepted the commitment of withdrawal of the reservations on the CEDAW, which was the important commitment to entail the legislative reforms in Turkish law especially in Civil Code. Through the convention, the reservations on Article 15 and 16 of CEDAW were withdrawn on September 1999 in the light of the review and amendment of the Civil Code.

The EU will also be evaluated as the other international actor leading the legislative reforms on gender equality in Turkey. While Turkey wanted to start the consultation on the membership of Turkey process, (10th December 1999, Turkey gained the "candidate country" status) firstly, EU's ideology and viewpoint will be investigated to understand EU's stance towards gender mainstreaming. Because of Turkey's candidacy, it was critically necessary to make Turkish laws compatible with the EU laws. In this regard, in the thesis, EU will be analyzed as the second international actor contributing to the process of legislative reforms about gender equality in Turkey.

Women's activism is the second actor group of the three-legged correspondence. The importance of this group is that women's movement in Turkey is nourished in relation to the international women's movement and international organizations (such as UN and EU) depending on the human and women human rights. Those women groups played a significant role in the process of legislative reforms through lobbying for amending the laws in Turkey. Therefore, the role of women's movement as a kind of linkage between international organizations and

the government will be explained. Women groups demonstrated that the demands for transformation were not only demands of the EU or UN. On the contrary, they demonstrated that women of the country demanded enforcements of the transformation on their behalf and they insisted on participating in the process of legislative reformation.

The state stance will be evaluated as the last actor group among the three-legged correspondence in that process. As state is the main actor responsible for making law, the current policies of the governments are directly related to the legislation process. To this end, supporting factors and obstacles in front of the governments will be one of the issues to be discussed in the thesis. Nonetheless, state institutions and their positive or negative stance towards the legislative reforms will be taken as the third group of actors in this thesis.

In this regard, one of the vital stages of gender mainstreaming, that is, the legislative stage, will be broadly described in the thesis and the research question of the thesis which is the “process of legislative reforms within gender mainstreaming” will be taken into consideration based on the Gender and Development approach. In addition, the actors of the “bottom up” process, namely the women’s groups and their supporters (EU and UN), and the actor responsible for providing resources to promote women’s empowerment, namely the state will be analyzed in the legislative reformation of gender mainstreaming for a debate of their respective effects on the process and on each other.

CHAPTER 2

GENDER MAINSTREAMING

2.1- INTRODUCTION

In this chapter, the conceptualization of gender mainstreaming will be elaborated. First, it will be historically analyzed how gender mainstreaming perspective emerged from the idea of gender equality. Next, the roles of the international organizations (EU and UN) in the process of the gender mainstreaming will be discussed. At the end of the chapter, a country model will be given as a case where gender mainstreaming is successfully applied. In this way, a background is prepared to understanding the Turkish case better.

2.2- THE MEANING OF GENDER MAINSTREAMING

2.2.1- Mainstreaming of Gender Equality

The term of gender mainstreaming is a policy based on the idea of gender equality. Before defining and discussing what gender mainstreaming is, it is necessary to clarify the term of gender equality. It is difficult to define gender mainstreaming without considering the gender equality models. Hence, the term of “gender equality” lies in the core of that of “gender mainstreaming” as gender equality and gender mainstreaming are related to one another. While gender equality is the goal in the policy, gender mainstreaming is the strategy to reach that goal.

It is difficult to isolate gender equality and gender mainstreaming from different forms of inequalities. Many other forms of differences such as based on race, social class, disability, age, religion and life course internally divide the “women” in itself into segments and groups. Hence, there has been an increasing attention paid to the nature of the relationship between these diverse forms of inequality and their implication in the context of gender mainstreaming theory. In other words, gender mainstreaming is a policy aiming to mainstream any forms of “Gender Equality” without discrimination.

Due to diverse forms of inequalities documented in the literature, there are various models of gender equality. For example, Rees classifies the gender equality in three different models. The first model perceives equality based on *sameness*. In this equality model, there is not a transformation in the gender relations. Social norms regarding gender roles in the society are still the same. Women previously enter male domains so the existing social norms are not challenged.. Rees describes this model as “tinkering” with gender equality.

The second model moves toward the equal valuation of existing and different contributions of women and men in a gender-segregated society. This second model is called “tailoring” by Rees. As herein defined, this model of gender equality merely tries to repair or restorate the inequality balance between women and men and fit to the needs of women in the society. Yet, there is not any intention about the transformation in the gender relations.

Rees’s third and the last model suggests a new social norm for both men and women, that is, this is a model in which the transformation of gender relation exists. This “transformation” model of gender equality presents new values for everyone, replaces the segregated institutions and principles associated with masculinity and femininity.

In this classification, Walby falls into the same line with Rees, according to Walby, only the third model, which is the transformation, constitutes the gender

mainstreaming as the first two models retain the existing social norms regarding gender involves the status quo (Rees, 2005; Walby, 2005). For both Rees and Walby, only the third strategy forms gender mainstreaming which has the potential to deliver gender justice. This is the only strategy that involves the transformation of the institutions and necessary standards for effective equality.

2.2.2- The Gender Mainstreaming Debates in Literature

It is difficult to specifically define gender mainstreaming. However, as it was mentioned, it can be argued that gender mainstreaming is a general policy to involve all types inequalities towards gendered roles.

There is a range of different models of “gender equality” mainstreaming into various policy domains in different countries based on divergent economic, political and social circumstances. For example, traditionally gender equality policies have focused on areas where it is possible to compare the disadvantaged position of women with the privileged that of man. At this point, differences emerge between gender equality and gender mainstreaming conceptualizations. According to Walby, gender mainstreaming goes beyond gender inequality. Gender mainstreaming is in the further stages, there is a specific ambition, and intention of subjecting all areas and policies with the gender equality practices. In other words, Walby (2005) perceives the gender mainstreaming as a result of broadening the areas of gender equality. As previously mentioned, the broadening the areas includes all areas and policies and all kinds of discriminations related to the gender inequality.

“Gender mainstreaming” or “mainstreaming the gender equality” is a global initiative but not evenly developed globally. As each country has its own different discriminations and inequalities based on their own cultural environments, each one has its own specific gender equality policies. The way of overcoming the problems in gender inequalities does not only depend on the

culture of that country, but is also related to the priorities of the gender mainstreaming policy.

In this context, as seen in Rubin's essay, Bacchi also states that gender mainstreaming is socially constructed in various ways according to the gender relations and national political context. The determining causes of the policy of gender mainstreaming are diverse. Briefly, gender mainstreaming is a transnational concept. In other words, gender mainstreaming is not primarily situated within a national or country framework, but rather has been transnational from the start (Rubin, 2001). Because of that reason, however, in the literature, there are some criticisms about this. First of all, Walby criticizes the gender mainstreaming's being a transnational policy from the start since this process poses particular challenges to the understanding of the process of policy development. As, the countries with an intention to implement the gender mainstreaming in their policies integrate the international issues and transnational policies into their own policy in a global world. And it causes a political and practical transfer one location to other, which gives rise to a complicated and insufficient policy (Walby, 2004).

After understanding the resource of gender mainstreaming and the origin of that policy, for defining the concept what gender mainstreaming is, an analytic strategy could be used to seek out underlying principles to abstract the essential characteristics of phenomenon as Rees have made.

According to Rees, gender mainstreaming is based on three key essential characteristics, which are, "the phenomenon of gender mainstreaming regards the individual as a whole person", "democracy and participation are dispensable characteristics of the phenomenon" and "justice, fairness and equality are the other dispensable characteristics of the phenomenon." (Rees, 2005, p.,562).

Further, she suggests that there are sets of tools that can be identified with each of these principles, including work/life balance, gender disaggregated statistics and

gender budgeting areas. From the universalistic perspective, the rate of the application of the principles and their tools in the policy making areas determines the application of the gender mainstreaming in a country.

The Council of Europe is the very effective unit on shaping gender mainstreaming and also involves questions and debates about what gender mainstreaming is (Verloo, 2005). Three key aspects are identified by the Council of Europe, which are integration of a gender perspective, a political process of ownership and a set of techniques or tools. The Council of Europe defines the gender mainstreaming as follows;

Gender mainstreaming is the (re) organization, improvement, development and evaluation of policy process, so that a gender equality perspective is incorporated in all policies at all level and all stages, by the actors normally involved in policy making. (Council of Europe, 1998)

Bacchi and Woodward perceive gender mainstreaming definition of the Council of Europe as an “empty signifier”. Hence, the meaning of the gender mainstreaming can be filled by an almost limitless variety of content as a result of the social construction of this phenomenon (Rubin, 2004).

Successful implementation of gender mainstreaming approach is also another debate in the literature. According to Moser, four stages should be followed in order to process gender mainstreaming in a successful way. First stage involves developing the terminology. The second stage is getting a gender policy in a place where the greatest advance has been made. The third stage is to implement the gender mainstreaming and the last stage is to evaluate or audit the practices (Moser, 1993). In this thesis, I will borrow Moser’s listed stages as a framework while describing the gender mainstreaming process in Turkey. This will also offer me a methodological tool to compare what Turkey experienced and what the literature on gender mainstreaming suggests.

As mentioned before, although policy developments have traditionally been considered within the context of specific countries, as mentioned before, the

development regarding gender mainstreaming has not been nationally centred. On the contrary, this centralization takes part as a result of the transnational processes. New ideas and new social movements usually firstly develop in the West and then are transferred to the rest of the world. Certainly, gender mainstreaming can not be incorporated into a notion of one-directional transfer as national actors are involved in the process. However, gender mainstreaming, first locates on the transnational base and then transfers to the nations.

Transnational process has been a component of the development of gender mainstreaming in almost all places and domains. There is little policy development which remains at the national level since, the origin of gender mainstreaming lies in the development policy. As considered, development methods, international regimes and dialogs within the globalization process are the important factors to arrange the transnational position of the gender mainstreaming.

Although, this process of policy transformation is a “*process of diffusion*”, Walby (2005) does not think that this is simply a process of diffusion from core countries to the periphery. According to Walby, gender mainstreaming process which is a process of policy transformation is rather one where there is “complex hybridization and development of variations in its forms in different locations” (p.,458).

Walby (2005) lists the following processes in classification;

- *gender mainstreaming is associated with a range of processes including advocacy by civil society groups and movements within a country;*
- *transformational advocacy networks;*
- *epistemic communities and expert networks drawing on the legitimation of universal human rights;*
- *isomorphic development within the European organizational field; legal compulsion from a transnational polity such as the EU;*

- *legal necessity following other political decisions, such as joining the EU; a mix of forms of soft law and targets, as in the EU open methods of processes, such as pressure from national civil society groups in dialogue with transnational experts.*

This classification implies that each country having a gender mainstreaming process takes part due to different reasons and this classification also helps us to analyze the priority reasons of the countries. While describing the gender mainstreaming process in Turkey, this classification allows us to see the Turkey's position and the differences from others.

2.2.3- The Implementation Areas of the Gender Mainstreaming

To understand from the definition, *gender mainstreaming is to incorporate the gender equality perspective in all policies at all level and all stages, by the actors normally involved in policy making*, all areas in the policy are considered as gender mainstreaming areas for implementation.³ Mainstreaming the gender equality means incorporating the gender equality point of view into all policies in a country. However, there are some preferential main areas targeted by gender mainstreaming strategies throughout the world, for instance, employment, violence against women and education, which are the first intervention areas.

Employment has been the first major area in which gender mainstreaming has occurred. For this area of intervention, there is a significant tool having a large implementation sphere, which is the gender budgeting. It involves in the governmental financial decisions and targets a major focus of activity. According to Walby (2005), gender budgeting is to be used as a priority among the tools used in gender equality policy.

³ Definition of gender mainstreaming of Council of Europe in 1998

Gender budgeting is a gender mainstreaming tool that includes a gender equality perspective in financial decisions. This usually happens at the highest levels of the policy making stages. It is a process of disaggregating budgets on the basis of the awareness of gender equality.

The other preferential area is that of “violence against women”. According to Walby and Lombardo, this area has developed after the employment policy (Walby,2005; Lombardo, 2005). However this field did not flourish from the EU as much as employment did. Hence the competence of the EU in this area is more limited. Subsequently, much development has occurred within the international feminist networks. Feminist activists have had effective use of the emerging institutions of global governance. Moreover, they have utilized the UN processes and have expanded the discourse of human rights in order to include women’s rights to the elimination of male violence. In other words, these developments basically are the result of the creation of global feminist networks, yet, at the same time, it is also a cause of changing the universal discourse of human rights. At the end of that circulation, women’s rights have been recognized as a matter of human rights. In this sense, the term of gender equality has entered in the mainstreamed political domains within the global conceptualization of human rights.

2.3- ROLES OF INTERNATIONAL ORGANIZATIONS IN THE PROCESS OF GENDER MAINSTREAMING

2.3.1- Gender Mainstreaming in International Regimes and Human Rights

Improvement of the discourse that issues of women rights are connected to universal human rights is associated with the development of international organizations. This is specifically connected with UN developments, such as conferences about gender inequality. Over time those discourses became connected to the gender mainstreaming processes.

Hence, while gender mainstreaming often draws attention to transnational process, it involves transnational networks and agencies also the discourse of universal human rights. These developments are specifically facilitated by the rise of global processes and institutions, such as the UN and the EU.

Meanwhile, feminist activity around the world became a transnational global movement. This has mainstreamed into the discourse of human rights. Kelly focuses on the gender mainstreaming and human rights and states that this mainstreaming of gender equality as incorporating into human right discourse has rapidly been materialized. As, Kelly especially focuses on the violence against women, her focus helps her to broaden the range of mainstreaming beyond the more usual economic issues. She examines the processes how women's concerns about violence were mainstreamed into the discourse in universal human rights issues at the global level. And all progress has been made in universal norms of law (Kelly, 2001).

Despite the progress has been made in universal norms of law; in a wide range of the countries, the human rights of the women were not legitimately considered. Women's Human Rights concept came to consideration first in 1993, at Vienna Human Rights Conference as a consequence of developments run into by international women's movement during 1976-1985, under the declaration of "United Nations Decade for Women".

In this declaration, the international community openly recognized that the body of international law and mechanisms (which were established to promote and protect human rights) did not properly take into account the concerns of women who form over the half the world's population. The States formally recognized the human rights of women as "an inalienable, integral and indivisible part of human rights" and expanded the international human rights agenda to include gender specific violations (UN, 1993).

In 1995, "Beijing Declaration and Action Platform", underlining that the women's rights were human rights, was accepted in United Nations World Conference on

Woman. The State parties committed to ensure the full enjoyment by women all human rights and fundamental freedoms and take effective action against violations of these rights and freedoms. In year 2000, “honor crimes, forced marriages and marital rape” were considered as acts of violence against women in the Declaration of Beijing the Fifth Special Session (Kardam, F., 2005).

It has been increasingly recognized that the legitimate equality of women with men has not been enough for the fulfilment of women’s human rights. Also women have profited less than men from the vision of human rights. In response to this recognition, currently the redefinition of the meaning of human rights is on the agenda to include the specific experiences of women as unequal treatment of men and women within the different parts of the society.

2.3.2. Gender Mainstreaming Process in the United Nations

The United Nations is a subsequent organization the role of which is to prepare international agreements with regard to the gender mainstreaming. General Assembly in UN body gathered conferences and formulated committees focusing on the issues of human rights and women’s rights. UN holds four World Conferences on Women which are held in Mexico (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995). Also Turkey has participated in all four international conferences on women and signed the legally binding international document regarding gender equality. Turkey’s position will be analyzed in the second chapter of the thesis.

Beginning in 1970s, the activities of Women in Development (WID) within the UN system also increased substantially. As mentioned before, Women in Development was the origin of the phenomenon of the gender mainstreaming. Members of the specialized agencies of the United Nations were invited to cooperate in achieving WID objectives and targets and to make available adequate staff and resources for the advancement of women.

In 1970, the General Assembly on International Action for the Advancement of Women decisions led to the organization of an International Meeting of Experts on the Role of Women in Economic and Social Development by the UN Division of Social Development in June 1972. In 1974, an International Forum on the Role of Women in Population and Development was held as part of the activities of the World Population Year. In 1975, the World Conference of the International Women's Year was held in Mexico, and the period 1975-1985 was declared the UN Decade for Women. The Mexico conference was followed by a mid-Decade conference in Copenhagen in 1980 and an end-Decade conference in Nairobi in 1985. According to Kardam, many observers have noted that the movement to include women's issues in UN conferences came from the informal WID network, particularly from supporters in nongovernmental development agencies (Kardam, 1991).

Among the UN conferences, Nairobi (1985) and Beijing (1995) conferences are very significant for the countries in terms of institutionalization and legislation process for gender mainstreaming. Especially, the conference held in Nairobi is significant for Turkey and the rest of the world accepting and executing the gender mainstreaming by stating that,

The attainment of the goals and objectives of the Decade requires a sharing of this responsibility by men and women and by society as a whole, and requires that women play a central role as intellectuals, policy-makers, decision-makers, planners, and contributors to and beneficiaries of development. (UN, 1985)

Regarding development perspective, according to Kardam, the goals accepted in the conferences include the alteration of the development assistance regime. They provide an environment which involves increased access and resources for women within the development programs. The gender-sensitive policies and projects were formulated by governments and international development agencies. By the end of the Nairobi conference, adopted guidelines The Nairobi Forward-Looking Strategies for the Advancement of Women formulated standards regarding development assistance and stipulated. According to that, policies in development

agenda, especially for women should involve all parts of donor organizations and WID programs and policies. Also it should be included into all agency procedures at program, projects and all sectors levels, for mainstreaming the gender equality (Kardam, 1991).

As human development is an indispensable field for gender mainstreaming, development agencies have begun to mainstream women's issues into their activities. Also, donors began to consider WID concerns not only in their projects or programs but also in their sector and policy-related works (Buvinic, 1988).

2.3.3- Gender Mainstreaming Process in the European Union

While international women's movements and United Nations were the main actors for policy making about the gender equality for countries in the world, European Union (EU) also played a significant role in the process. The EU is particularly important about the issues of women rights as there is much progressive legislation in the EU regarding this matter. The main sources of European Commission law consist of primary legislation, secondary legislation and case law about the women's rights.

First of all, equality between men and women is one of the basic principles in the Union. The main targets of the European Union in this field are to guarantee equal opportunity and the equal treatment to men and women and also to contend with all forms of discrimination on the base of sexuality. For instance, currently, EU has thirteen⁴ Directives about the gender equality. Besides, there are, as well,

⁴ Those Directives are Council Directive 75/117/EEC of February 1975 (31975L0117) on The Application of the Principle of Equal Pay for Man and Women, Council Directive 76/207/EEC of 9 February 1976 (31976L0207) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Council Directive 79/7/EEC of 19 December 1978 (31979L0007) on the progressive implementation of the principle of equal treatment for men and women in matters of social security, Council Directive 86/378/EEC of 24 July 1986 (31986L0378) on the implementation of the principle of equal treatment for men and women in occupational social security schemes, Council Directive 96/97/EC of 20 December 1996 (31996L0097) amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational

some Directives closely related to the gender equality though not made for directly men and women equality.

The first rectification concerning the equality between men and women at the level of the Community was in the Treaty of Rome in 1957. In the Article of 119 there is a statement about the equal pay for equal work. Although the equal pay for equal work took part in the Treaty of Rome, it was not implemented during a decade after ratification of the Treaty (KA-DER, 2005).

After revising the “Treaty Establishing the European Community”, the topic of equality between men and women gained a more important status in the Treaty. According to the Second Article, developing the equality between men and women is one of the basic duties of the Community, which aims to cure inequalities. Implementing men-women equality in every level and phase of whole policy, which is a strategy of establishing the gender equality in main policies and plans, called gender mainstreaming. This approach has become a main policy in the Community since then. The Article 13 of the Treaty delegated authority to the Council to struggle with all discriminations based on the sexuality. According KA-DER, in the book of “Social Policy of Europe and Women’s Rights” (p.,18), arrangements, implementations, and the perception

social security schemes, Council Directive 86/623/EEC of 11 December 1986 (31986L0613) on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, Council Directive 92/85/ EEC of 19 October 1992 (31992L0085) on the introduction of measures to encourage improvements in the safety and healthy at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), Council Directive 96/34/EC of 3 June 1996 (31996L0034) on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, Council Directive 97/75/EC of 15 December 1997 (31997L0075) amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the frame agreement on the parental leave concluded by UNICE, CEEP and the ETUC, Council Directive 97/80/EC of 15 December (31997L0080) on the burden of proof in cases of discrimination based on sex, Council Directive 98/52/EC of 13 July 1998 (31998L0052) on the extension of Directive 97/80/EC on the burden of proof in cases of discrimination based on sex to the United Kingdom of Great Britain and Northern Ireland, Directive 2002/73/EC of the European Parliament and Council of 23 September 2002 amending Council Directive 76/207/EEC (32002L0073) on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Council Directive 2004/113/EC of 31 December 2004 (32004L0113) implementing the principle of equal treatment between men and women in the access to and supply of goods and services

regarding this are the results of the historical development about the equality between men and women in the European Union which appeared on a economical union basis.

Historically, gender equality policy and gender mainstreaming have appeared in the European Union in regards of its own equality policy and using its specific equality tools (Lombardo, 2003). It has used a range of instruments to pursue its gender equality agenda. However, currently the EU is a significant actor in the development of gender mainstreaming in the contemporary period.

In other words, gender mainstreaming is a phenomenon appearing in the body of UN and in its conferences. Thanks to the high rate of participation from different countries to the conferences, many inequality models took place in this phenomenon existing in these countries. It comes to mean that European Union and the countries in it are one part of groups contributing to the creation of the gender mainstreaming within the policy, that is to say, gender mainstreaming is a transnational policy. To understand the process of gender mainstreaming in the European Union, it is essential to analyze the equality policy of EU.

2.3.3.1. Historical Process of Gender Mainstreaming in EU Equality Policy

According to Hoskyns, the origin of equal opportunities policy in the EU, is to be found in Article 119 of the founding Treaty of Rome in 1957 (Hoskyns, 1996). It guaranteed women the same rights in law and the same opportunities in the public sphere which were available to men. Article 119⁵ did not arise from a campaign for women's rights. Rather, it arose from French concerns for fair market

⁵ Article 119 of Treaty of Rome (1957); Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job.

competitions and commits member states to the principle of equal pay for equal work.

The French government was first concerned about that differential rates of payment to women in the textile industry in other member states represented an unfair competitive advantage in France. Its objective in Article 119 was to mitigate this effect. However, the commitment was only fully enacted in the 1970s through the rulings of the European Court of Justice to plaintive cases raised by individual women. As a result of these cases with the growing demands from feminist movements across member states, the principle embodied in Article 119 was elaborated in three key directives:

First directives on equal treatment with regard to employment and working conditions⁶; the second ones on equal treatment in matters of social security⁷ and third ones on equal pay for men and women. Subsequently, the EC has put in place a complex set of legal provisions aimed at offering women equal access to employment, vocational training, working conditions and, social protection. Some of these provisions bind member states to implement national legislation such as the directive on the protection of pregnant women at work. Other provisions such as the Council recommendation about childcare only have the capacity to guide policy-makers. Legislative reforms is the first stage for gender mainstreaming, so, in the European Union's legislation process, gender mainstreaming can be clearly seen as integrating the agenda (Lombardo, 2005).

Meanwhile, the gender equality originally depends on the discussion around the feminist ideas in the literature. Gender equality lies in the last stage of the evaluation of equality understanding between men and women within the political campaigns. Political campaigns can be divided for gender equality into three distinct phases in terms of first, second and third wave feminism. The first wave feminism began with the period of campaigning for women's suffrage at the turn of the century, using the liberal principles of equal rights and treatments. The

⁶ Adopted in 1976

⁷ Put into practice in 1978

second wave feminism was in the 1960s for positive action and separate women's provision. It came to an end in the 1990s with a shift to the gender perspective involving men in the process of social change.

Within the feminist movements historically, the holistic conceptualization of equality was not a unique subject, because there are many different experiences of member states. Christine Booth evaluated this situation with a metaphor of a *'three-legged equality stool'* (Booth and Bennett, 2002). According to this metaphor, gender mainstreaming strategy has three important supports which are the equal treatment perspective, the women's perspective and the gender perspective. The first one, the equal treatment perspective shapes actions guaranteeing women the same rights and the same opportunities as men in public sphere. Its instruments are statutory and mandatory. The second perspective which is women's perspective recognizes women as a disadvantaged group in society, There is a need of particular treatment and specialist provision in order to repair their past experience of discrimination. Finally, the gender perspective promotes actions that aim to transform the organization of society to a fairer distribution of human responsibilities. In Booth's "three-legged equality stool", the differences between women and men are acknowledged, especially the gender perspective uses new tools for gender-sensitive policy-making. All these perspectives work together to achieve gender equality in social arrangements. According to Booth, this combination is necessary to promote a more egalitarian society.

2.3.3.2. Booth's and Bennett's Equality Stool in the European Union

The 'Equality Stool'

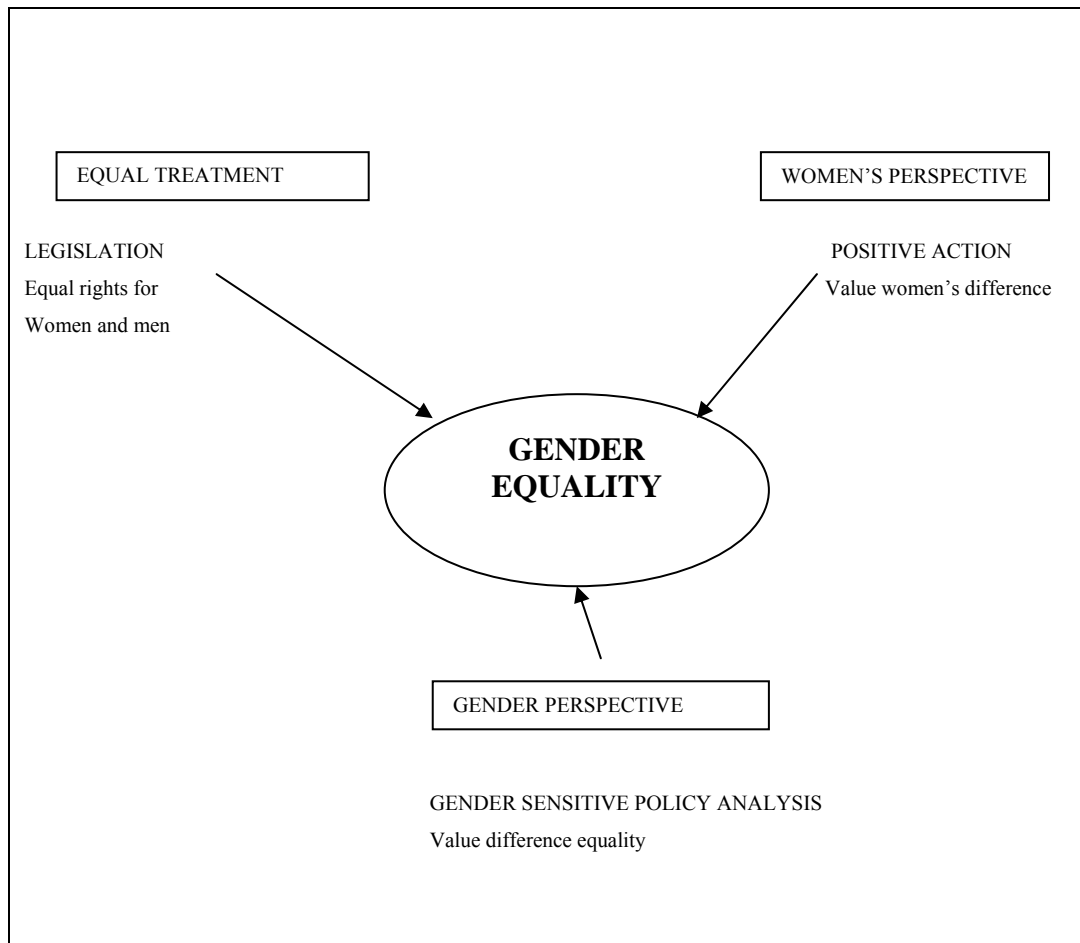


Figure 1: The Equality Stool

According to Booth's and Bennett's the 'Equality Stool' metaphor having a three-legged stool, the equal treatment perspective, the women's perspective and the gender perspective are mutually supportive (Booth and Bennett, 2002). According

to them, gender mainstreaming has emerged as the new equality strategy. It can be positioned in the centre of the diagram as it reflects the results of the contemporary conceptualization and practical experience of strategies advance gender equality. In my opinion, the “Equality Stool” of Booth and Bennett, shows the existent structure of gender equality models and gender mainstreaming in the European Union countries. Although this diagram states that the gender equality is nourished from these three-legged perspective, gender equality understandings and implementations are different from each other. The reason of this situation is that each member state of EU has its own equality history including the legislative base, the strength of support for a women’s perspective and its ‘gender contract’.

2.3.3.2.1. Equality Perspective

The equal treatment perspective is characterized by the EU’s legislative framework. This perspective stemmed from a limited doctrine. This doctrine is just an abstract of individual rights and related with economic objectives. According to Booth and Bennett (2002), however, this is in a complex set of legal instruments. The importance of that framework is that there are patterns for recognizing the rights of collective groups in it; also it enables a variety of social policy instruments to be developed.

Although EU legislation exists with a certain degree of union of nation-states’ legislations, EU legislation is more advanced in conceptualizing women’s rights despite having many different conceptualization of that in each member country. According to Rossilli, this legislative framework on the subject of equality impact has been most important in newly democratized states such as Greece, Spain and Portugal. Before that, these countries had no experience of equality laws or even equal opportunities for policies (Rossilli, 1997).

2.3.3.2.2. Women's Perspective

The women's perspective is reflected in the EU's institutional structure and it has a special part in funding that perspective. Institutionally, the Comity on Women's Rights in the European Parliament and the European Commission Equal Opportunities Unit in the Directorate for Employment and also Industrial Relations and Social Affairs units aim at ensuring some information and policy-making process in which women's particular needs are taken into consideration. These structures supporting to women's perspective, established in the body of EU, are also involved in devising policy and securing budget lines and also carrying out the positive action projects.

The main vehicle for those projects are the Third, Fourth and Fifth Community Action Programmes for Equal Opportunities for Women and Men. And there are, as well, some programmes such as NOW (New Opportunities for Women) in the Structural Funds. As Booth and Bennett (2002) stated, it is a ring-fenced funding to support training opportunities for women.

Also it seems that this type of policy is insufficient and ineffectual in execution in the EU. Although advances in the EU equal opportunities agenda have occurred as a result of the women's perspective, according to Booth and Bennett, this input has never been fully recognized.

However, Hoskyns states that presidency of European Commission was influenced by vocal demands coming from women's movements across Europe. According to Hoskyns, there was a strong women's lobby affecting the decisions in the European Union countries. This lobby includes the prominent European Women's Lobby and grassroots of women's organizations. Hoskyns (1996) evaluates this lobby as a vital driver for institutional provisions for gender equality. This lobby also expresses the women's perspective.

In sum, although for Rossilli (1997) women's effects are insufficient and ineffectual, it is still important in that it values the experiences of women and acts to support women's differences. Unlike the equal treatment perspective, it regards women as a disadvantaged group, who deserve particular treatment to rectify past historical and structural oppression.

2.3.3.2.3. Gender Perspective

The gender perspective is the most recent approach to gender equality in the EU political agenda. According to Benneth and Booth (2002), it arose from a policy jungle of equality measures and initiatives, and they evaluate this perspective as losing energy and failing to bring change to women's lives. The inadequacy of existing policies was attributed to a lack of coherence.

The Third Community Action Programme for Equal Opportunities first formally acknowledged gender perspective.⁸ Importantly, the programme referred to the society-wide benefits that equality measures could bring. Depending on the liberal ideas, according to this view, both men and women would gain. Therefore, the focus on women turns to both women and men in the name of gender mainstreaming.

The gender perspective has a strong support of the equal treatment perspective and the women's perspective. However it is necessary to note that it is not just a combination of those views. It still represents a new and different reconceptualization of gender equality. First, the main target point in this perspective is gender, not only women. Second, the gender perspective aims to create a more equitable distribution of human responsibilities. Also for this perspective it is compulsory to transform both men's and women's roles and to adapt the society to the new transformed of distribution of human responsibilities.

⁸ Action programme from 1991 to 1995

Gender perspective depends on perceiving women as a homogeneous group. This homogeneous group contains women's diversity and difference depending on age, disability, religion, social class, life course, race, and ethnicity. In other terms, the gender perspective suggests the use of methods from the other perspectives which are equality perspective and women's perspective. According to Booth and Bennett, his aim here is to have a balance between the individualization and the one-sided focus on women. There is an ongoing debate in the academia and a group being against the new equality understanding. They argue that gender mainstreaming already exists in the gender perspective. Ertürk is one of the academicians standing on the side of criticising the gender mainstreaming. The main argument of them is that by shifting the focus from women to gender, the power and the capacity of struggle will be separated and will decline.

2.4. A SUCCESSFUL CASE OF GENDER MAINSTREAMING IN THE WORLD; SWEDEN

To understand how gender mainstreaming can be used in a country, it is thought to describe countries which apply gender mainstreaming policy in a successful manner. It will be easier to understand the Turkey's situation in the following chapters. Sweden is chosen as one of the countries as implementing gender mainstreaming as a policy in the country depending on the EU reports.

According to official reports of the Swedish Government in 2007, there is a sustainable gender mainstreaming in the country.⁹ The Swedish Government is the main actor responsible for achieving gender equality, also each ministry has responsibility for advancing the gender equality in its policies, however, there is still a specific ministry whose policy area is only restricted to reach the gender equality in the country.

⁹ Practical methods from the Swedish Gender Mainstreaming Support Committee (JamStöd)

Sweden is known as one of the countries with the greatest gender equality. The main target of gender equality policy in Sweden is to provide the equal power to men and women for shaping the society also their own lives. For making this target possible, there some governmental institutions having authorities in the country. Their task is to ensure that the same rights, equal opportunities and obligations between men and women. These institutions could be stated as;

- *The Ministry for Integration and Gender Equality*; this Ministry coordinates the government's gender equality policy
- *The Gender Equality Unit*; it is under the Ministry for Integration and Gender Equality, and it is responsible for coordinating the government's gender equality work and projects about gender equality. Also, it is charged of implementing the government's gender equality policy into developing methods. By this unit, there is a person employed as a specialist on gender equality in each country administrative body
- *The Equal Opportunities Commission*; this commission gets employers to take active measures for gender equality.
- *The Office of the Equal Opportunities Ombudsman*; the mission of the ombudsman is supervising the current situation's compliance with the five government laws¹⁰.

It can be said that the Office of the Equal Opportunities Ombudsman is one of the important institutions that enables Sweden to oversee the gender equality in the country. It is a governmental agency ensuring equal rights between men and women and reviews the rights in every level of life such as workplace, education, service sectors, labour employment, social insurance, parental leave and so forth.

Institutions and government make their investigations and their policy using the gender equality statistics in every area. In every type of programme, project and

¹⁰ 1-The Equal Opportunities Act

2- The Act concerning Equal Treatment of Students in Higher Education,

3- The Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students,

4- The Protection of Discrimination Act,

5- The Parental Leave Act

policy, official statistics are collected concerning individuals, and analysed and presented by gender. In addition, a qualitative gender equality is used in the programmes with the statistics, which means that both men and women's knowledge and experiences are taken into consideration. The aim is to improve the development in all areas of society.

When look at the education area, girls are more successful as having two thirds of all degrees in the undergraduate universities. In post graduate studies, they constitute almost half of all students. In the workplace, according to the Equal Opportunities Act, every employer has to work and follow particular targets to promote gender equality between men and women. Discrimination and sexual harassment is also prohibited. Pay differences are never to be depended and explained by gender difference in the country. The labor law of Sweden regulates the maternity and paternity leave (BERR, 2006). Like women, men have to right to leave before and after the birth of the baby. This paternity leave makes the discrimination in the work place decrease aiming to change the patriarchal culture and gender roles in the society. Especially, using this tool to transform the gender roles within the gender mainstreaming policy is very effective for changing the social roles. All parents are entitled to eighteen months paid leave for each child. In addition, its cost is to be shared between employer and state. Three months is required minimum length to be used by parent, in practice generally fathers use that. However, it is not seen adequate to be able to transform the gender role by Swedish policy then, some political parties on the left, discuss on a regulation in the law to necessitate using eighteen-month long paternal leave equally between father and mother.

Besides, it is necessary to state some important laws mostly affecting women's life. These are the Abortion Law, the Act on Violence against Women, and the Act Prohibiting the Purchase of Sexual Service.

Sweden is a country that has completed the legislative regulation on the ground of gender equality. And the special measures to eradicate gender discrimination such

as “positive discrimination” and act in opposition to discrimination are used in this process. The positive discrimination has infiltrated into the regulations in the society, politics, work place and family. The application and inspection responsibility belong to the State. Therefore, in Sweden, this policy is run in each institution, and each state institution is responsible for its policy area to implement the gender mainstreaming, and it can be said that the gender mainstreaming in Sweden is going on by permeating the legislative reforms and special measures into the application through the institutions.

CHAPTER 3

LEGISLATIVE REFORMS IN TURKEY ON THE GROUND OF GENDER MAINSTREAMING BETWEEN 1998-2005

3.1- INTRODUCTION

In this chapter, the legislative reforms will be evaluated within the gender mainstreaming process. As Turkish laws have important function to prepare legal environment for new gender equality policy, the focus will be on the amendments in the concept of gender equality.

Since 1998, major legal reforms towards gender equality have taken place in Turkey. The changes made in unequal articles can be evaluated as a result of women's movement's successful campaigns, international obligations and new State policy, which will be called as three legged correspondence and be evaluated in detailed in this chapter.

With the support of the international conferences, agreements and treaties, in the last decade the women's movements' successful attempt has gained most important advancements towards the recognition of women's rights in Turkey. The national legislation of the country had been full of a range of discriminatory provisions. It also had a very strict patriarchal perspective until the late 90's. Therefore, there was a range of serious changes in the Turkish law in the last decade. In 1998, this situation started to change with the adoption of the law on protection of the family in order to prevent domestic violence. After that, The Turkish Grand National Assembly accepted the new Turkish Civil Code in November 2001 with crucial changes, specially in the domain of marriage. With

the new Civil Code women were granted with new rights. After the Civil Code reforms, campaigns for the reform of the Turkish Penal Code with a gender equality perspective were initiated. In 2004, after having the powerful three-year campaigns, the Turkish Parliament accepted the new Turkish Penal Code. The new Penal Code has more than thirty amendments, which is very significant for gender equality and protection of women's human rights. The Civil Code and the Penal Code extensively changed the legislative system to embody principals of gender equality related with global human rights.

In this chapter, although there are many amendments in the laws after 1998, only the legal amendments which were fulfilled to reach the gender equality will be described and evaluated. In this context, the amendments in the Turkish Constitution, Civil Code, Penal Code, Labor Code, the Law on the Protection of the Family and Income Tax Act will be mentioned.

3.2- CHANGES IN THE TURKISH CONSTITUTION

Equality of sexes is a statutory recognition and it takes place in the Turkish Constitution. As the State's main responsibility is to establish equality, in April 2004, Article 10¹¹ of the Turkish Constitution was amended, which regulates the nondiscrimination. The Article 10 of the Turkish Constitution stipulates that men and women have the same and equal rights. The inclusion of the term of "special temporary measures" was rejected by the government although there was an intensive movement by women's organizations. Special Temporary Measures would bring about affirmative action for getting gender equality, however, it was not realized. The sentence of "*No privilege shall be granted to any individual, family, group or class*" has been kept without any changes. As stated in the introduction of the fourth and fifth combined shadow report prepared to be presented in the Session of 32. UN. CEDAW in 2005, this article (as its stands)

¹¹The Article 10 states that "*Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. No privilege shall be granted to any individual, family, group or class*"

could be used as a base of refusal to measurements having the special measures in the fields of education, employment and political participation (UN, 2005).

As mentioned before, legal amendments based on the gender equality are the first step of the gender mainstreaming in Turkey. Especially the discussions regarding the Article 10 of the Turkish Constitution stipulating the equal rights between men and women is very important to show the importance of the stance of law in the gender mainstreaming process. “Special Temporary Measures” is a very critical clause to create a convenient environment for institutionalizing the gender equality units. That clause could get each state institutions and associations to establish their gender equality units within their institutions or associations. This would have been a legal basis to make gender equality institutionalize, however, this was also not realized.

In addition, in October 2001, Article 41 of the Constitution was amended, redefining the family as an entity that is “based on equality between spouses.” The new article reads: “The family is the foundation of Turkish society and is based on equality between spouses.”

Besides, the Article 66 of the Turkish Constitution regulating the Turkish citizenship was amended in 2001 due to contravention of the principle of equality (Giritli, 2001). Men and women began to be treated in a same manner while they are getting the Turkish Citizenship. Moreover, the passage of “in the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail” was added in the Article of 90 of the Turkish Constitution.¹² This addition has made the international agreements prevalent over domestic arrangements.

¹²Additional Sentence: 7.5.2004-5170/7.

3.3- THE REFORM OF THE TURKISH CIVIL CODE

3.3.1- The Historical Process of The Changes in The Civil Code Between 1980 and 2002

Reaching egalitarian treatment of women, in the legal framework has taken long time passing through the many steps since foundation of the Turkish Republic up to now. The first step was the adoption of the Swiss Civil Code. Although it had very egalitarian articles in its term, by the time, it was still the same and insufficient. But new considerations and achievements in gender issues paved the way to amendments in the legal system to improve the status of women.

With the support of international organizations, the rise of women's movement after the 1980s resulted in significant gains for women. This paved the way for the final enactment of the Civil Code reform. In the last two decades, the women's movement had succeeded in achieving equal rights in Civil Code.

In 1984, the reform of the Civil Code became an issue of public debate as the Ministry of Justice published a draft law. Women's groups submitted a series of formal request to the National Assembly insisting on its acceptance. Yet, the draft law was unsuccessful to achieve although the CEDAW was ratified in 1985. There was a promise to remove the reservation within a short time. With this promise, Turkey committed to change its discriminatory legislation which was in validity. In spite of that, Turkey sustained its commitments to change the discriminatory legislation without any alterations. Because of this, these commitments were reiterated in the country report presented to the UN Committee on CEDAW in 1993. In 1994, a new commission was formed to prepare a new draft of the Civil Code however Turkey's commitments to CEDAW were repeated in the UN Conferences on Women held in Beijing in 1995 and in the second and third combined reports to CEDAW in 1997 as there was not any accomplishment in the draft. A draft law aimed to change the appropriate articles which were relevant to family law in the Turkish Civil Code.

This was prepared by the Directorate General on the Status and Problems of Women. However, in this phase, the Directorate did it through consultation with all concerned institutions and organizations and its aim was to prepare the ground for lifting Turkey's reservation of CEDAW. The signature campaigns were organized first and later all these signatures were presented to the Ministry of Justice to demonstrate the public support.

As the result of all those attempts, on November 22, 2001, the new Turkish Civil Code was approved by the Turkish Parliament and on January 1, 2002 came into effect.

3.3.2- The Amendments in the Turkish Civil Code within a Gender Equality Perspective

The most important feature of the new Civil Code is that it has a new approach to the family as a social institution and to the women's role in it. The old legal approach was abandoned, in which women had a legislatively inferior position in the family with civil liberties and duties. However, the new approach defines the family as a union based on equal partnership. Again, both husband and wife manage the union of marriage together and use the right of parental authority together. Consequently, this new concept is also reflected in the language of the new Code as changing the terms referring the men and women in the family. The term of "the spouses" replaced to "the wife" and "the husband". With the new Civil Code, all amendments depend on the equality between the spouses. The principle of equality between spouses has become established. The equality principle includes not only equality in rights but also equality in responsibilities in the conjugal community. The Code began to ensure the gender equality as highlighted in the following articles;

- The terms in the Code has changed. The term "the spouses" replaced to "the wife" and "the husband".

- In the previous law, there was a hierarchical situation between spouses as husband was the head of the family. However with the new Civil Code since 2002, the husband has not been considered as the head of the family anymore. It means that spouses are equal partners and they can run the marital union with equal decision making powers in cooperation. According to the Article 186 in the Civil Code, spouses have the right of directing together. This right has been given both spouses in a joint right (the joint rights are the right to choose the joint domicile, the right to live together and the right to manage the conjugal community) under the name of “the right to direct the family unity” and according to Akıntürk, it makes the spouses participate the management on equal terms. However, any of the spouses has to inform to other spouse before making an attempt (Akıntürk, 2003).
- The husband is not only person in the family to have to decide the domicile anymore. With the new code the spouses have equal rights over the family domicile. It is the right of choice of the domicile of both spouses. Akıntürk (2003) puts this conjoint decision on domicile in the “joint rights” of spouses in the family. And with the new Civil Code, for each act regarding the domicile, it is necessary to take the consent of the spouse (Şıpka, 2002).
- With the new Civil Code, the representative power which had been used only by the husband in the past was shared between spouses, that is, the spouses also have equal representative powers in the Article 188. With the new Civil Code, both spouses have the same common representative power, which can be evaluated in “management right of the conjugal community” in “joint rights” and “joint responsibility” such as providing the happiness of family unity, loyalty, living together, solidarity and subsidiarity, baby-sitting and child rearing and taking a share in the expenses (Akıntürk, 2002, pp; 105-135).
- The “illegitimate children” which was an discriminatory concept and existed in the old Civil Code has been abolished. It was separating and intersecting the children in the family as being born out of wedlock and born in wedlock in the Article 282 with its dissimilar result in rights, law and heritage.

- The matrimonial property regime has been changed. The new law provides the spouses to have equal rights over property acquired during marriage. This new property regime, which is “the participation in acquired property” gives for equal division of property (which was obtained throughout the marriage). From the adoption of the Swiss Civil Code 1926 to the 1st January, 2002, the property regime of “separation of property” had been used instead of the statutory community property in the Turkish Civil Code. According to Moroğlu, after 75 years later, it was seen that the “separation of property regime” caused enormous inequalities between spouses when the marriage ended and also it caused woman damnification in the family. Therefore, the property regime has changed in order to counter the damnification caused by “separation of property regime” and to share the accumulation of property obtained throughout the marriage equally between spouses (Moroğlu, 2002). According to this new modification, spouses have the equal praise in the marriage regardless of seeking for what they earn or which position they hold. By this amendment, the contribution of women’s unpaid and invisible labor is recognized and assigned an economic value. The most significant feature of the amendment is that, the invisible used labor of women has become a visible one. This new property regime can be evaluated as an achievement because of the economic empowerment of women in the Article 202.
- In the new Civil Code, the spouses are equally allowed to undertake legal transaction with each other and with third persons if there is not any contrary provision in the law. In the previous article, legal transaction between spouses needed to consent of the Peace Court Judge and wife was able to undertake legal transaction with third persons merely by her husband’s approval. With the amendment, the representation of the family has been changed in the Article 193 (Pınar, 2007).
- With the new Civil Code a woman is free to choose either to keep her surname before her husband’s surname or get merely her husband’s surname in the Article 187 (Pınar, 2007). However a woman is not free to use only her surname after marriage. There are some academicians and lawyers being on the side of criticizing the regulation due to inequality. For instance, according

to Moroglu and Abik, that women have not got any right to use only their surnames after marriage is against the human rights and also it is incompatible with the Article 16/1 (g) CEDAW¹³, which gives the right to chose the family name (Moroglu, 1999; Abik, 2005). According to Sirman, some women's groups and woman lawyers proposed that spouses had to decide which surname they would use between theirs before the marriage (Sirman, 2000).

- Before 1990, the article in the old Civil Code had obliged women to obtain permission from their husband for working outside the home. This article was removed in 1990 by the Constitutional Court and the law maker did not bring any replacing provisions. However, in the new Civil Code, there is a clear statement. According to the statement, the spouses are not obliged to ask for permission from each other for his or her choice of work or profession. However, the second clause has a probability to cause an unclear and discriminatory situation which was added to the same article as "the harmony and welfare of the marriage union". According to the Article 192, this union should also be kept in mind while choosing work. In addition, it could cause violations of women's right to work outside the home through arguments about the harmony and welfare of the marriage union because of its unclear statement of the Article 192.
- The new Civil Code rearranged the minimum marriage age. In new rearrangement, the age of 17 is permitted as the legal minimum age for marriage for both women and men. Before this amendment, it was 17 for men and 15 for women. According to the new Civil Code, men and women cannot marry before they are 17 years old in the Article 124 (Pinar, 2007). The new Civil Code abolished the previous discriminatory condition. Although the minimum age for marriage is 17 in the new Civil Code, it can be an exception as decreasing the minimum age limit to 16. The Peace Court Judge is the only person to have the authority ever to make such an exception. Akıntürk (2003) evaluates equalizing the minimum marriage age as providing the equality between man and woman like other regulations in the family law. The

¹³ The Article 16/1 (g) of CEDAW; The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

increase of the minimum marriage age is a very significant amendment affecting many young women in the country. It can be evaluated as a cause of the rise of pregnancy age. Furthermore, because of postponing the marriage to an older age, the amendment supports the compulsory school age and girls' attendance to the school.

The reform of the Turkish Civil Code constitutes a major progress in abolishing discriminatory provisions in the law and introducing an egalitarian understanding to the family and gender relations. As it is evaluated in the 4th and 5th Combined Report (p:6), the new law improved women's rights and legal standing. Furthermore, it also has a long term impact on altering the perceptions by changing practices and customs that constitute discrimination against women. Ertaş and Koç lean on those amendments in the Civil Code equalizing men and women in the family on withdrawing the reservations in the CEDAW (Ertaş and Koç, 2002).

Meanwhile, subsequent to ratifying of the new Civil Code, the Law on the Establishment, Duties and Functioning of Family Courts was implemented and went into force on January 9, 2003. It empowers the Family Courts to deal with the cases stemming from the Law of the Family.

3.4- REFORMS IN THE TURKISH PENAL CODE

In Turkey, another most important legal changes have taken place in the area of the Penal Code. In respect of the new Penal Code, which came into force on June 1, 2005, there was a lot of controversy because of its large area to infiltrate in the society. Because of this, not every application could become law due to having a huge opposition camp in the parliament and also in the society. In addition, it introduced modern, egalitarian, and gender sensitive but inadequate arrangements regarding gender equality and violence that targeting women. All those issues will be discussed next. But first, the historical process of the Turkish Penal Code will

be given. Then, the reforms regarding the Turkish Penal Code will be explored within the Turkey's EU Accession Process.

3.4.1- The Historical Process of Changes in the Penal Code

In Turkey, the second important improvements have taken place in the Penal Code within the legislation part of the gender mainstreaming. Until 2002, there had been some attempts to create a new Code. The first attempt for the creation of a new Code was first realized in 1954 at the same time with the efforts of the reform of the Civil Code. Five years after the military coup of 1980 in 1985, the second attempt has been made. A commission for the preparation of a draft code was constituted under the approval of the Ministry of Justice. However, according to the union of bar associations, this draft was not democratic and humanistic and it was highly criticized. Because of those reasons, a second draft was constituted by another commission in 1988. Although the new commission tried to constitute a new democratic and humanistic one, it was criticized again due to similar reasons. Finally in 1997, the first draft law was decided to be sent to the Parliament.

While the disputes were ongoing on the draft Civil Code and Penal Code, the year of 1998 was very sample moment for Turkey in the process of integration into EU, because Turkey was officially named as a candidate for European Union accession process.

Although it took a long time to prepare a new draft for Penal Code, it was finalized and sent to Prime Ministry on November, 2002 and this condition was also acknowledged in the "Fourth and Fifth Combined Periodic Report of Turkey" to CEDAW (KSSGM, 2003). In the next year, 2003, the Commission of Justice took the draft law and than the debates began at the Turkish Penal Code Draft Sub commission. The restructuring of Turkish Penal Code constituted one of the most vital issues on the agenda for the 2003-2004 legislative terms in the Turkish Parliament.

In this stage, the importance of the role of women's groups is not deniable. The women's groups persistently worked to increase pressure over the government and parliament. Also, they lobbied to ensure the necessary changes before the draft law were brought in the general assembly for voting. Ankara and Istanbul were the main places for meetings, panels and press conferences concerning sexual offences and other abusing of women's bodily rights to raise public awareness for pressure over the government (WWHR, 2003). The strong women's demand, government policies with some resistance and EU accession process (three-legged correspondence) were the main actors behind the legislative reforms in the Penal Code.

3.4.2- The Effects of the Turkey's EU Accession Process on the Legislative Reforms in the Turkish Penal Code

There were several news and critics of the Turkish Penal Code and EU Process in the press. Dr.Selma Acuner, expertise in European Union Social Politics and academician in Ankara University and the KADER Ankara Representative, declared that if Turkey wants to have access to the negotiation process with EU, Turkey has to fulfill its liabilities. Nazire Kalkan evaluates those as political criteria, therefore, annulling the discriminatory articles very important, if the discriminatory articles are not annulled, Turkey would confront EU, and EU would utilize women issues and politics against Turkey (Kalkan, 2004).

The efforts within the non-governmental organizations throughout the country and Turkey's EU Accession Process made possible to overcome the resistance in the country. The demands of women began to be seen in the Political Criteria Section of National Program prepared for EU Adjustment Process, the government declared its principal duty as to ensure to complete equal provision of all human rights, freedoms and cultural rights by all individuals without any discrimination. And it committed the provision of gender equality measures in practice as a privileged area without any discrimination their language, race, sex, political opinion and religion.

Finally, the new Turkish Penal Code affecting lives of all Turkish citizens, men and women, children and adults, in private, public, social and political spheres was approved by Parliament on September 26, 2004. The new Code, which consists of 345 articles, was published in the Official Gazette on October 12, 2004¹⁴.

3.4.3. Reforms in the Turkish Penal Code

3.4.3.1. Crimes Against Individual

In the old Turkish Penal Code, sexual crimes were grouped and stated under the heading of “Crimes Against Traditions and Public Customs and Crimes Against the Family Order”. However, in the current Turkish Penal Code, the sexual crimes are placed under the sixth chapter heading of “Crimes Against Sexual Immunity” under the “Crimes Against Individual”. And according to Bıçak, sexual immunity is violated by sexual behaviors on a body (Bıçak, 2004).

This alteration demonstrates the change of the mentality and philosophy of the society. The approaches to the crimes against women imply the women’s place as a human being or a part of a society. According to Women for Women’s Human Rights (WWHR) – NEW WAY,

Placing crimes against sexual and bodily integrity under crimes against society implies that Women’s bodies and sexuality do not belong to themselves, but rather to the constructs of the patriarchal society and family. It openly dismisses a person’s right to have control over his/her own body and sexuality and contradicts the fact that any sexual offence is first and foremost an attack against an individual human being. (WWHR, 2003)

In the previous Penal Code, the emphasis was on traditions, morality and chastity that enables the women’s bodies and sexuality to be controlled, suppressed as

¹⁴ Turkish Penal Code (Code No:5237, Acceptance Date: 123/103/2004) 12 October 2004, 25611 numbered Turkish Republic Official Gazette, TC Başbakanlık Mevzuatı Geliştirme ve Yayın Genel Müdürlüğü.

commodities of society through the family union certainly by men in the section of “Crimes Against Traditions and Public Customs and Crimes Against the Family Order”. According to the WWHR-NEW WAY (2003), this grouping was highly criticized by Turkish Penal Code Women Working Platform stating that penal law should provide the rights of citizens and the victims of the crime equally.

At last, with the amendments in 2004 in Penal Code, sexual crimes began to be evaluated as a crime against to individual. As an enormous change in the philosophy of the law, within the new Turkish Criminal Code, sexual crimes were put under the heading of “Crimes Against Individual” (Book II, Section II) and placed in the subsection “Crimes Against Sexual Immunity”.

3.4.3.2. Adultery

Regulating adultery by men and regulating adultery by women, which were regulated by the Article 441¹⁵ of the Penal Code in 1996 and the Article 440¹⁶ of that in 1998 were cancelled by the Turkish Constitutional Court on being of going against the principle of equality of the Constitution. The adultery is also used only as a base for divorce in the Article 161 of the Civil Code. Although it was cancelled before, in the draft law of Penal Code, “adultery” was tried to be put in the Code again. Because of that, many debates happened before approval of the new Code by Parliament on September 26, 2004. For example, Toroslu and Ersoy, evaluated the “adultery” clause in the draft as casualty. According to them, legislation of the custom and usage by legislating the adultery do not develop the society, on the contrary, it retrogrades the situation (Toroslu and Ersoy, 2004).

¹⁵ Article 441 – (law no 2275 dated 8/6/1933) : (Nullified: by the verdict of Constitutional Court, no: E.1996/15, K.1996/34 and date:23/9/1996); A husband, who abides with an unmarried woman, for the purposes of dwelling in a unity, in the place of abode at where he has been living with his wife or in a place where is widely known, shall be sentenced to imprisonment from three months to thirty months

¹⁶ Article 440 – (law no 2275 dated 8/6/1933) (Nullified: by the verdict of Constitutional Court, no: E.1998/3, K.1998/28 and date: 23/6/1998); A wife who commits adultery shall be sentenced to imprisonment from three months to thirty months. The participating party who knew the wife was married shall be punished with the same penalty.

Also some academicians like Ekşi thought that the remedy of adultery could not be prohibitions (Ekşi, 2004). As a result of the debates among jurists, lawyers, and women's groups, the "adultery" was extracted from the draft due to particularly the EU accession process. And adultery is no longer considered as a crime in the Turkish Penal Code.

3.4.3.3. Rape

Rape can be defined as a crime against the existence and integrity of a person as a violation of the right of a person. If the crime is committed by penetration of an organ or likewise into the body, it is sentenced as a special sexual offence with a higher prison sentence. It is not supposed to happen in order to satisfy the sexual desires for being a special crime (Bıçak, 2004).

In the previous Penal Code and in the draft of the Penal Code, the terms "honor", "chastity", "honesty" or "virtuosity" (ırz) were formulating articles on sexual offences. However, it is a sexual right concerning bodily integrity and human rights. Eraslan, one of the deputies in the Penal Code Commission in the Parliament and a lawyer, evaluates this amendment as being intentional. According to Eraslan, the reason why they used the terms "sexual offence" and "sexual harassment", instead of the terms "chastity", "honor", "honesty" or "virtuosity" (ırz) is that the terms like "chastity" are very abstract. He states that by the changes of terms of the crime of sexual offence, the crime becomes a concrete event and the meaning of the terms would not be changed in the course of the time (Eraslan, 2004). Also he clarifies the idea behind the amendment as "the sexuality of woman is not man's honor, or someone's honor, this subject is directly related with the woman's bodily integrity" (p:161).

In the previous Code, it took place under the "Crimes Against Traditions and Public Customs and Crimes Against the Family Order", now it is under the

“Crimes Against Sexual Immunity” in the heading of “Crimes Against Individual”. That is, it was accepted as a crime against bodily, sexual integrity. This philosophical change is truly very important to understand the changes in the social mentality. The crime of rape is redefined in the Article 102¹⁷ as the insertion of an organ or a tool to the body and the perpetrator is sentenced to imprisonment changing from 7 to 12 years. And by the new law, marriage after the sexual offence does not avoid punishment anymore.

However, there are some deficiencies in the law and debates on that subject. According to the women groups in Women Platform on the Penal Code there is not a clear definition of the rape and a clear definition of rape is demanded because law does not explicitly describe which modes cause rape or sexual offence and because rape may occur through oral and anal penetration, as well as vaginal or through forced insertion of an object into the person’s body. However, in my opinion, the law does not restrict the modes and tools of the penetration saying “if the crime is committed by penetration of an organ or likewise, the penalty of imprisonment shall be from 7 years to 12 years”.

The other criticisms stem from its depending on the complaint. The prosecution of the crime of rape should not be bound to the complaint of the victim. The judgment of crimes of rape could only be possible by such arrangements.

¹⁷ The article 102; – (1) A person who infringes, by sexual acts, the right to bodily integrity of another person, upon the complaint of victim, shall be sentenced to imprisonment from two years to seven years - (2) If the crime is committed by penetration of an organ or likewise into the body, the penalty of imprisonment shall be from seven years to twelve years. In the case where the crime is committed against the spouse, investigation and prosecution is subject to the complaint of the victim. (3) If the crime is committed; (a)- against a person who was, physically or mentally, incapable of self-defence, (b)- by malfeasance of authority of public service or of service relation, (c)- against a person who is relative thereto within the third degree of consanguinity or affinity, (d)- by a weapon or jointly by more than one person, The terms of penalty imposed according to the provisions above shall be increased by one half. (4)- The perpetrator shall also be penalized for malicious bodily injury if violence was practiced beyond the measure of achievement of overcome the resistance of the victim. (5)- If the victim incurs impairment of physical or mental health by reason of the crime, the penalty of imprisonment for not less than ten years shall be sentenced. (6)- If the victim enters vegetative state or dies by reason of the crime, imprisonment for life in solitary confinement with no possibility of parole shall be sentenced.

In the previous Code, if the rapist got married to woman who was raped by himself, the sentence of the rape was to be implemented after five years of marriage. With the new Penal Code this regulation has been subverted (Sarıhan, 2005). On the other hand, there are some criticisms by lawyers against to paradoxes in the law. For example, Tezcan, Erdem and Önok, criticize the abolishment of the unpunished situation with the marriage after sexual offence as contradicting itself in the law, since the law does not punish the infringement of the right to have bodily integrity of spouses by sexual acts in the case of the crime that was not committed by penetration of an organ or likewise into the body, that is, if it is not a special sexual assault like rape (Tezcan, Erdem and Önok, 2007).

3.4.3.4. Marital Rape

In the new Penal Code, the crime of the sexual offence committed against to the spouse, marital rape, is evaluated as a special sexual offence with higher sentence. In the previous Penal Code, it was stated that marital rape did not constitute a rape offence. This directly contravened CEDAW General Recommendation no 19.¹⁸ concerning “Violence Against Women”. The marital rape clearly is a situation in which married women do not have the right to choose to have sexual intercourse or not with their husbands and their bodies and sexual rights are completely subjected to their husbands’ control. Bıçak, states that marriage unity attributes both liability of loyalty and liability of satisfaction of sexual desires of spouses between each other. However, in the marriage unity, there are some medical and legal restrictions concerning the demands of satisfaction of the sexual desires. According to Bıçak, violation of those restrictions constitutes a special sexual offence and this also necessitates a higher penal sanction (Bıçak, 2004).

¹⁸General recommendations made by Committee on the Elimination of Discriminations Against Women,, General Recommendation No:19 (11th Session , 1992), Specific Recommendation Article, 25, (b); States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.

Moreover, Sarihan (2005) evaluates this penal sanction of marital rape, directly related to the private area of life, in the main idea of the Penal Code, as “human, first” (p:22).

In the case of marriage only, the inquiry and prosecution of the crime of rape is bound to the complaint of the victim according to the Article 102¹⁹ in the Penal Code . Rape is considered as torture and in the case; the penalty of imprisonment is from 10 to 15 years²⁰.

3.4.3.5. Equality of All Women

It was stated in the Article 10 of the Turkish Constitution that, all women and men are equal in the law. That is, while all men and women are equal regardless of whether married or unmarried, virgin or non-virgin, sex worker or not. In this way, discrimination of women depending on their marital status, virginity or being sex worker is prevented by the obstacle of the Constitution of Turkish Republic.

In addition, the new law protects all women who are subject to sexual assault. The difference between the old and the new law is that the old law considers the rape of a virgin woman is more severe offence than the rape of a non virgin woman and that of a married woman is more violent offence than that of a single woman. In the face of sexual offence, with the new Penal Code, the regulations approaching married and single woman or virgin and non-virgin woman in a different manner were eliminated. According to Sarihan, those different types of approaches aiming to save women were privileged preservations however, she

¹⁹Book II, Section II, Subsection 6, Article 102, No.2 ; If the crime is committed by penetration of an organ or likewise, the penalty of imprisonment shall be from seven years to twelve years. In the case where the crime is committed against the spouse, investigation and prosecution is subject to the complaint of the victim.

²⁰ Book II, Section II, Subsection 3, Article 94- (1) Public officers who commit acts, upon a person, inhuman and degrading, and intended to inflict severe physical or mental pain or suffering, and lead to disrupt perception and decision abilities, and to humiliating, shall be sentenced to imprisonment from three years to twelve years. (3) In cases where the act occurs as sexual harassment, the penalty of imprisonment sentenced shall be from ten years to fifteen years

states that, those were not for individuals those were for marriage units (Sarihan, 2005, p:28).

The discriminatory clauses in articles concerning rape and woman kidnapping are annulled in the new Turkish Penal Code. The definition of “woman” is also excluded. In the description part of the Code, women are referred to as ‘woman’ and ‘girls’ implying the virgin and non-virgin women, however, there is not a definition of “man” in the description part.

3.4.3.6. Illegal Restraint of the Liberty the Women

According to the old law, the marriage of the offender to the kidnapped woman victim is considered to be a cause of “active penitence” and the marriage enables the postponement of prosecution or sentence. (Sarihan, 2005) In the previous law, “if the victim gets married to offender, the sentence is postponed for 5 years. And if the marriage goes on more than 5 years, his sentence of kidnapping and raping gets vanished.” According to Sarihan, getting married was presented to offender as a reward for the kidnapped woman. This implies that women’s bodies belong to the society and family, and the body of women construct the honor and chastity of the society. The articles openly suggest marriage as a way out for perpetrators, and provide legal means to force women to marry to the offenders of kidnapped woman with the active penitence of kidnapping .

With the new Penal Code, the penalty of forcing a person to go or stay somewhere is imprisonment between 1-5 years. In case the crime is conducted with a sexual aim then the penalty is increased by half an amount²¹

²¹ Book II, Section II, Subsection 7, Article 109- (1)-A person who illegally (without an order from an established authority and outside the cases provided by law) deprives another person of his liberty of leaving a place or of staying a place shall be sentenced to imprisonment from one year to five years. (3)- if the crime committed; (f)- against a child or a person who was, physically or mentally, incapable of self-defence, the terms of penalty imposed according to the provisions above shall be double.

3.4.3.7. Discriminatory Sentences On The Murder Of A Newborn Child

Some discriminatory sentences have been changed with the new code. One of them is about the murder of a newborn out of wedlock. The murder of a newborn out of wedlock by unmarried mother had reduction in sentence in the previous Penal Code. The mentality under this provision was that a child out of wedlock compensates the “honor” of a woman and family and thus the mother is justified in murdering the child through reproducing the philosophy bounding the “honor. However, the right to life is the basic right for every human being because of this reason, with the new Turkish Penal Code the article giving a reduction to the murder of a newborn child was abolished.

3.4.3.8. Acceptance of the Sexual Harassment

The other success of the new Penal Code is the acceptance of the sexual harassment, and particularly in the work place. According to Bıçak, the sexual harassment is a sexual offence not violating person’s bodily immunity but disturbing the person in an oral or actual manner (Bıçak, 2004). Sexual harassment in the workplace is a kind of offence considered to be a violation of employment rights.

The penalty of sexual harassment in the new law is sentenced from 3 months to 2 years or monetary penalty is conducted upon the complaint of the victim in the Article 105 ²² in the new Penal Code . If the act takes place in the work place by misusing the hierarchical order or the comfort of working together, the penalty of

²² Book II, Section II, Subsection 6, Article 105, (1)- The harassment of another person for the purpose of obtaining favours of a sexual nature is, subject to the complaint of the victim, sentenced to imprisonment from three months to two years or judicial fine. (2)- If such acts are committed by malfeasance of authority emanated from official hierarchy or service relation; or by deriving the benefit of working at the same office, the term of penalty imposed according to the provision above shall be increased by one half. If the victim had to leave the job by reason of the crime, the penalty to be decided cannot be less than one year.

the crime is enhanced half amount and the penalty can not be under 1 year imprisonment.. Sarihan (2005) evaluates the sexual harassment in the work place as one of the crimes targeting the woman's bodily integrity. According to her, sexual harassment in the work place gets women to go back their homes. Therefore, in order to get over the social pressure in the work place and to provide more participation of women into the work places, Sarihan, appreciates the punishment of sexual harassment in the work place as a serious advantage.

3.4.3.9. Sexual Assault Under Custody

When sexual assault under custody is examined, sexual assaults including rape often happen as a kind of torture in custody. This violation of human rights makes the victim stay under a significant pressure. Besides, it threatens the victim and increases the dimension of the suffering of the victim.

In the new Turkish Penal Code, the penalty of crime of rape is the imprisonment from 7 to 12 years. In cases where the crime is executed, armed and/or by officials and/or by more than one person, the penalty is increased half an amount.²³ Sexual assault by officials is also defined under the heading of "Ill treatment and Torture" and in this case the sentence is imprisonment from 10 to 15 years.

²³ Book II, Section II, Subsection 6, Article 102,(2)- If the crime is committed by penetration of an organ or likewise, the penalty of imprisonment shall be from seven years to twelve years. In the case where the crime is committed against the spouse, investigation and prosecution is subject to the complaint of the victim.(3)- if the crime is committed; (b)- by malfeasance of authority of public service or of service relation, (c)- against a person who is relative thereto within the third degree of consanguinity or affinity, (d)- by a weapon or jointly by more than one person, The terms of penalty imposed according to the provisions above shall be increased by one half.

3.4.3.10. Honor Killings

“Honor killings” are intentional murders breaking one of the basic human rights of women which is the right to life. In that situation, the state is accepted as one of the responsible side of the crime and also it is liable to act and take measures to prevent and eradicate honor crimes to protect this fundamental right of women to live and enjoy their sexual rights and freedoms safely. Although honor killing violates the human rights of women, it was considered in the old Penal Code as a slight penalty. Because of these reasons, the article 462 of the old Turkish Penal Code has been abolished. It had a statement being that witnessing or suspecting the spouse of an act of infidelity serves as provocation. Proving the annulment of this article has no actual intention to stop honor killings. The state holds the duty to dissuade the people with its provisions.

For these reasons, the women groups in the Women Platform on the Penal Code demanded the exclusion of honor crimes from the article “Unjust Provocation” and inclusion of a clause with a severe punishment by referring to Turkey’s commitments to CEDAW, Beijing Platform and recommendations of the European Council to eradicate the harmful traditional practice of honor crimes (WWHR, 2003).

In the new Turkish Penal Code, killing for suspected or witnessed infidelity is removed in the article “Unjust Provocation”; but the term “honor killings” is replaced by “killings in the name of custom”. Crimes for killings in the name of custom are placed in “Crimes Against Life” besides the blood feud crimes and the penalty for the crime is sentenced to heavy life imprisonment.²⁴ Although the “killings in the name of custom” (*töre saikiyle kasten adam öldürme*) are considered as aggravated homicide, this provision is insufficient for the eradication of honor killings. Therefore, the incomplete usage of the term of “killing in the name of custom” in the Code is criticized by Toroslu (2005),

²⁴ Book II, Section II, Subsection I, Article 82; (j)- if the crime of the felonious homicide is committed in the name of custom, the penalty of the crime shall be sentence to heavy life imprisonment.

Bayraktar, Köksal, and Tezcan (2007). According to them, there is not any criterion in the law to determine whether the killer has acted “in the name of custom” or not. Also, according to Hakeri, to accept the existence of the incentive of the custom in the killing, the death decision has to be made by the “family council”. When this condition becomes fact, an aggravated homicide due to being premeditated has also come true (Hakeri, 2006). Because of those reasons, Tezcan (2007) thinks that the usage of “honor killing” instead of “killing in the name of custom” is more appropriate in order to cover all kinds of killing acted in the name of honor.

In other words, it does not provide any preventive measures against honor killing. It still provides a freedom for perpetrators of honor killings to get sentence reductions. By stating only custom as an aggravated circumstance, if the perpetrator claims to have killed in the name of his honor, the provision will not be applied. Furthermore, “killing in the name of custom” limits this harmful practice to only certain regions of Turkey where the term *töre* is applicable. However, honor killings are committed throughout the country. The provision also remains incompatible with international documents, which acknowledge the term “honor crimes”. Hence, I argue that, although there are progressive improvements regarding gender equality, still the new law includes inequality towards women.

3.4.3.11. Virginitv Testing

Virginitv testing can be described as a violation of human rights against a woman’s sexual and bodily integrity. This practice was performed in various public institutions such as schools and prisons and also it is employed by force in families when women are supposed to have sexual relations before marriage, even, sometimes just for a proof of women’s virginitv before marriage.

In the new Penal Code, the term “virginity test” has not been clearly stated, however, the term “genital inspection” has been used. In the Article 287²⁵ of the Penal Code, this inspection is restricted, only if it can be ruled with the decision of adequate judge and public prosecutor. Otherwise the person forcing and making the genital inspection is sentenced. According to Sarihan the deficiency in the new regulation is that it is not necessary to take the consent of the aggrieved woman. Besides, Sarihan (2005) evaluates this kind of interferences without any approval of the individual as being against the human rights.

The pressure on the women’s virginity restricts women’s human rights and freedoms and even it may cause them to be killed or force them to commit suicide. By no means, the state has a mission to ban this action and penalize the practice of all kind of virginity testing in the penal code under all circumstances in order to protect women’s sexual and bodily integrity. Although there was a forcible demand from the women’s organization about banning the virginity testing under all circumstances (Sarihan, 2005), the women groups could not manage to get rid of it completely.

3.5. THE LABOR LAW AND WOMEN’S RIGHTS TO ECONOMIC INDEPENDENCE

Another important development introduced in the legislation after 1998 in Turkey is the Labor Law²⁶ and Women’s Rights to Economic Independence. This came into force on June 10, 2003. It can be evaluated as a stipulation and prohibition of every kind of discrimination in the labor area. It was formed by gender point of view and fundamental human rights in employee-employer relations. It

²⁵ Article 287 (1); without the decision of adequate judge and public prosecutor, the person sending the someone to the genital inspection and the person doing the inspection shall be sentenced to imprisonment from three months to one year

²⁶Labor Law, Law No:4857, Acknowledgment Date:22.5.2003, Publication Date in the Official Gazete and No:10.6.2003-25134

introduced certain improvements for women and recognition of sexual harassment at the workplace. Also, the prohibition of removal from office on ground of pregnancy was included. Furthermore, women's declaration of independence income tax was put in to the Income Tax Act by an amendment in 1998.

Discriminating based on several grounds including sex and gender was banned in the Article 5 . It cannot be paid different wages to men and women workers on the base of different sexes with equal productivity in the same workplace.

Besides, the new Labor Law increased the duration of maternity leave, which is the time a mother takes off before and after the birth. According to the Article 74²⁷ of the Labor Law, women cannot be enforced to work for eight weeks before and eight weeks after the birth of baby. This period may be extended with a medical report as taking into account the nature of the work. Also, six weeks after birth, the woman may use a six-month leave without pay. However, although women have totally sixteen weeks maternity leave with pay, men do not still have a paternity leave, which is the time a father takes off after or/and before the birth. Therefore, increase in the duration of maternity leave may cause a decrease in women's participation in the workforce regardless of men's paternity leave.

3.5. THE LAW ON THE PROTECTION OF THE FAMILY

The Law on the Protection of the Family²⁸ became effective on 17th of January in 1998 to abolish the domestic violence. Under the law, stopping violence in the family and the preventive measures for family violence are arranged (Uluğ, 2005). It can be evaluated as a positive step in dealing with the domestic violence against

²⁷ The Article 74 of Labor Law (4857); It is essential not to have woman workers worked eight weeks before the birth and eight weeks after the birth. In the case of plural pregnancy, two weeks add the 8 weeks before birth. However, if female desires to work with an approval by doctor, she can continue to work until 3 weeks to birth and this work time adds to time after birth. These permit periods can increase or decrease related to physical fitness of worker and the nature of the work and this situation is signified with the doctor's report. During the pregnancy, female worker is supposed to leave with pay in order to periodic controls.

²⁸ The Law on the Protection of the Family No; 4320

women, particularly the one committed in the family, which is one of the most important issues of violence against women in Turkey. The new law enables to apply to court for a “protection order” against the perpetrator of the violence. In the law, the practice of the interlocutory injunction is left to the policy force. Like the Penal Code and Civil Code, the efforts of the new feminist movement and the impact of the global women’s movement which resulted in UN treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were the main source of these amendments. With this law, domestic violence became visible and sentenced, thus the offender is subject to various penalizing measures such as;

- Warning the offender spouse without violence and acting kindly towards the members in the family
- Forcing the offender to abandon the house,
- Prohibiting the destruction of the possessions of other family members.
- Banning on disturbing the family through the means of communication devices,
- Confiscation of arms owned by the offender,
- Warning the offender spouse about not to come the conjugal community domicile with alcohol and drug and warning him/her about not to use those materials again.
- Applying the similar precautions suggested in the law.
- Payment of the temporary alimony (Uluğ, 2005)

Penalty of the violation of these measures would be from 3 to a maximum of 6 months of imprisonment. To apply the law, it is needed a complaint to the policy by the victim or any other people.

It can be considered that cases involving domestic violence are under the general provisions of the Penal Code. The date, 1998, when it became effective is very critical to answer this question because, in that year, the previous Penal Code was in the force, which did not intervene the family disputes and violence. As mentioned in the Penal Code part, the philosophy and mentality of the law was on

the traditions, customs and family focal instead of individual. There were some difficulties in the determination and punishment of such crimes because of that mentality in the Penal Code, that is, the private sphere of the family life remained outside of the regulatory mechanisms, which is the legislative framework. However, domestic violence was concerned and penalized by the Law on the Protection of the Family, also it began to be talked openly as public concerns, once perceived as private.

In sum, the legislative reforms regarding gender equality between 1998 and 2005 have been described. It can be argued that through the amendments in the Turkish Constitutions, Civil Code, Penal Code, Labor Code, and the Law on the Protection of the Family, egalitarianism is achieved in gender equality manner. Besides the amendments in the provisions, the most original point is to change the mentality of the laws. The Civil Code accepted the equality between spouses in the family; Penal Code interpreted the sexual offence as “Crimes against Sexual Immunity” under the “Crimes Against Individual” instead of “Crimes Against Traditions and Public Customs and Crimes Against the Family Order”. And the Penal Code turned a text having important advantages relating women. According to Sarihan (2005), it has some deficiencies in provision, nevertheless, she evaluates the amendments as earning. And every amended articles in Civil and Penal Code are very impressive in terms of the population they penetrate. Labor Law regulated equality based on several grounds in the work area and increased the maternity leave, which is evaluated as leading to a decline in the number of women participating in workforce. And lastly the Law on the Protection of the Family has been evaluated as the first law ever put on against the domestic violence such a private subject, which is very common in the country, that is, the legislative reforms from 1998 to 2005 has been very successful to mainstream the gender equality, despite some deficiencies.

CHAPTER 4

ACTORS IN THE PROCESS OF LEGISLATIVE REFORMS BETWEEN 1998 AND 2005 WITHIN THE GENDER MAINSTREAMING:

“Three-Legged Correspondence; International Organizations, Women’s Activism and State”

4.1. INTRODUCTION

This chapter aims to describe the actors and their roles in the gender mainstreaming and its legislative reform process from 1998 to 2005. So, in this chapter, the main sources and the bases of the gender mainstreaming in Turkey will be analyzed in order to understand the process of legislative reforms which were made during 1998-2005. Foremost, mainstreaming the gender equality in Turkey would be evaluated in terms of women’s movement, international base, and national base, which is called as “three-legged correspondence” in the thesis and these are the main actors in the process of legislative reforms stage of gender mainstreaming in Turkey.

Gender equality policy in Turkey is also dependent on the international relations. But those international relations are changing, being amended and included into the national agenda. Because of this, the effect of the state policy on the legislative stage of mainstreaming the gender equality in Turkey could not be investigated or studied without the international considerations. Firstly, since they created the origin of the gender mainstreaming in the literature and affected the reform process considerably, the international organizations and movements will

be evaluated in the first place. Secondly, the contribution of the collaboration of international organizations with the women's organization in Turkey, which is the most effective supporter of the reforms as the second leg of the correspondence. Lastly, the last leg, state will be dealt with. The effect of the state on the reformation process will be analyzed. After the reforms have been completed, the effects of law start on the state in order to reshape the state institutions to mainstream the gender equality within the gender mainstreaming by day-to-day work. Because of that, the institutions are depicted to understand how they are used to implement and mainstream the gender equality policy after the legislative reformation. In sum, this part specially explores what happened in Turkey during the legislative reforms with its three-legged correspondence actors.

4.2. THE IMPACTS OF EU AND UN ON THE PROCESS OF LEGISLATIVE REFORMS IN GENDER MAINSTREAMING AGENDA IN TURKEY

Turkey has national and international liabilities regarding gender equality within conceptualization of women's rights. The main source of the international responsibilities depends on the international agreements and decisions of the United Nations, Council of Europe, International Labor Organization and the European Union. Among those, EU and UN organizations are the most effective international organizations for Turkey to mainstream the gender equality in its own political agenda. Because of this, the focus of this chapter will be the international agreements of Turkey with United Nation and the European Union. Indeed, the effect of both UN and the EU are very significant on the legislative regulations in Turkey.

The other reason why UN and EU are evaluated is that both women's movement in the national base and, EU and UN in the international base can be considered as the triggers for the attempts of settling down the gender equality in Turkey. Also, this is partly related with the country's general special and economical

development policies. Currently, Turkey's development strategies improve and are shaped by some international organizations like EU and UN. As Turkey's economic reforms has long relied on the base of global relations and decisions, gender equality policies are also shaped by the international discourse.

4.2.1. The Impact of the United Nations

The United Nations is a very subsequent organization for its role to prepare international agreements, General Assembly Resolutions, gathering conferences and forming committees focusing especially on human and women's rights. Since 1975, UN has held four World Conferences on Women (Mexico, 1975; Copenhagen, 1980; Nairobi, 1985; Beijing 1995). Turkey has also participated in all those international conferences and signed the legally binding international documents regarding gender equality.

As mentioned in the first chapter, the Nairobi (1985) and Beijing (1995) conferences are extremely significant for Turkey in the process of establishing the gender mainstreaming in the country. In those conferences Turkey has tried to mainstream the gender institutional area and promised to follow gender equality policies, particularly in the intervention areas related to education, maternity, and infant mortality. Also, Turkey promised to withdraw the reservation over the CEDAW.

As well as being regarded as the donor and the member of the United Nations, Turkey is party to many UN agreements regarding the mainstreaming the women's issues into its activities. Some of these agreements are specifically related to women's rights and some are general agreements on human rights that are also applicable to women's rights. Turkey is party to the following agreements regarding women's rights:

- Convention for suppression of the traffic in persons and of exploitation of prostitution of others (1949)²⁹
- Convention on the Political Rights of Women (1952),³⁰
- Convention Relating to the Status of Refugees
- International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979 and Optional Protocol to the Convention³¹
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized Crime (2003)³²,
- Convention on Nationality of Married Women (1957)³³;

Each of them had an effect on the legislative reforms concerning the gender equality. Among them, the most important and functional ones are the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979 and Optional Protocol to the Convention in the subject of gender equality. These are directly related to the gender inequality. In 1979 United Nations adopted CEDAW, “Convention on the Elimination of All Forms of Discrimination Against Women”. In UN documents it is stated that the convention brings together the internationally accepted principles on the rights of women in a legally binding form.³⁴ It commits governments to take all appropriate measures,

²⁹ Entered into force 25.07.1951

³⁰Entered into force 1954. Turkey signed 12.01.1954 and ratified 26.01.1960. Law 7288, Official Gazette, 02.06.1959, No. 10220

³¹Turkey 20.12.1985, Optional Protocol signed 08.09.2000 and ratified 29.10. 2002. Law 4770, Official Gazette, 02.08.2002, No: 24834

³² Entered into force 25.12.2003, Law 4804, Official Gazette, 04.02.2003, No: 25015

³³ Entered into force 1958

³⁴The United Nations and the Advancement of Women 1945-1995, “Recognizing women’s role in development, 1963-1975”, (1995) UN Doc.,NY, p.41

including legislation, to ensure the full development and advancement of women rights and to guarantee them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men .The Convention was the first international legal instrument defining discrimination against women.

Convention on the Elimination of All Kinds of Discrimination Against Women (CEDAW) is also one of the most major conventions for Turkey to implement the gender equality. It was signed by Turkey in 1985, with reservations to paragraphs 2 and 4 of Article 15³⁵ and paragraphs c,d,f and g of Article 16.³⁶ In July of 1999, these reservations were withdrawn with the planning of amending of the Civil Code. CEDAW was not only an important criterion in the process of changing the Turkish Civil Code, but it was also very significant in the process of amending the Turkish Penal Code. For example, in 1997, in “The Second and Third Combined Periodic Report of Turkey”³⁷, presented to CEDAW, it was counted the contradictory articles of current Penal Code in 1997 with the clauses of CEDAW³⁸. In other words, in the debates on the amending the Penal Code, CEDAW was used as a very vital justification tool.

³⁵ Article 15, 2nd paragraph; States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals, 4th paragraph; States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

³⁶ Article 16, (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

³⁷ KSSGM (1997), Turkey’s Second and Third Combined CEDAW Report, Takav Mat., Ankara.

³⁸ Those articles are the articles 12: sentence to execution; the articles 414, 415, 416, 417, 418: sexual crimes to individuals under age of 15; the article 419: sexual behavior; the article 420: woman dancing in sexual parties; the article 421: improper sexual remarks; the article 422: put on women clothes; the article 423: uplifting of virginity with the promise to marriage; the articles 426, 428: pornography; the article 429: detention of a girl or a woman; the article 434: marrying to the detained woman; the article 435, 436, 437: incitement to prostitution; the article 440, 441, 442, 443, 444: adultery, annulled by the Constitutional Court in the years 1998 and 1999; the article 445, 446, 447: illegitimate children; the article 448: reduction in sentence to homicide; the 469 and 470: abortion

The Optional Protocol to the Convention, which was signed on 8 September 2000, was ratified on 30 July 2002. The Protocol came into force in January 2003. By adopting the Optional Protocol, Turkish Government has confirmed its commitment to women's advancement and full compliance with the Convention on the Elimination of All Forms of Discrimination against Women. This convention is an important international instrument that aims to put an end to discrimination against women, not only in the public sphere, but also in the private domain because of the fact that CEDAW is the main power behind the amendments of Penal Code and Civil Code, which are directly related to the public and private life of women.

Turkey was also among the countries which accepted the Beijing Declaration and Platform for Action without any reservations. Turkey promised to fulfill three main commitments and several lower level commitments of the Conference. The commitments were as follows:

- Withdrawal of the reservations on the UN Convention for the Elimination of All Kinds of Discrimination against Women (CEDAW), ratified in 1985.
- Reduction of maternal and infant mortality rates
- Increase in the compulsory basic education from five to eight years

A significant source of influence for gender issues upon states has been bilateral agencies and multilateral sub organizations of UN such as UNDP, UNFPA, UNICEF, UNIFEM, UNESCO, Such external sources have paved the way to the emergence of gender equality units achievable in the country. In this way both moral persuasion and financial incentive policies were implemented through using the gender mainstreaming. Moreover, the issue of gender mainstreaming is used and evaluated in the UN units as an integral part of development.

For example, the National Program for Employment of Women's Integration in Development Projects was realized in collaboration with UNDP during the years between 1993-2003. The project was implemented by the Directorate General

with the technical assistance of UNDP. The primary objective of the project was to reinforce the national machinery (i.e., the General Directorate), founded specifically to promote gender equality, in order to enhance its institutional capacity and civil society organizations to participate in the development process. In accordance with this objective, some steps were taken towards setting up a gender segregated database in collaboration with the State Statistics Institute (SSI)³⁹ The aim behind this was to provide data which would inform the gender policies.

Furthermore, in 2005 Turkish Labour Unions Confederation (TLUC)⁴⁰, which is one of the major labour union confederations in Turkey, attempted to organize women's bureaus within its own member organizations. TLUC also convened a Women's Labour Platform in association with UNPFA and brought together representatives from universities, state institutions and chambers of commerce and industry as well as other labour organizations. The Platform aimed to push the creation of basic mechanisms to enable the execution of laws and legal regulations in order to effectively remove the problems that women face in their working lives⁴¹.

The major influence of UN about the gender mainstreaming is seen on the local regions and especially in Eastern parts of Turkey as this region is the least developed and the poorest area in the country where the development projects are needed. Although the effectiveness of these UN organizations in the implementation process of the gender mainstreaming in Turkey is accepted, there is not sufficient organized local constituencies, that is, 'Western influences' have caused many countries to become evasive in their support of women's agendas as a result of causing the gender mainstreaming to become ineffectual. However, the main feature of the gender mainstreaming is that it has a transformation process without stopping and interrupting to reach the gender equality in which both men

³⁹ Now it is called the Turkish Statistical Institute (Turkstat)

⁴⁰ TLUC is Türkiye İşçi Sendikaları Konfederasyonu, Turk-Is

⁴¹ You can find more information in <http://www.turkis.org.tr/bolum.php?kat=121> , accessed on 30 January 2006.

and women are included. In addition to being perceived as foreign, some sources of international support have not always promoted transformative attention towards women.

Consequently, in Turkey, UN and its sub organizations are very significant in the process of legislative reforms within the gender mainstreaming policy. However, one of the most important constraints is that UN units have not got the legislative rights to carry out the gender equality policy in the country. Still, UN can be considered to have pioneering and triggering roles for Turkey. It can be evaluated that without state support still international organization attempts could implement gender equality in Turkey; however, for the policy sustainability, the main agents should be national.

4.2.2. The Effect of the European Union

While women's movement and International Organization such as United Nations were main actors for policy and law making regarding the gender equality in Turkey, EU also played a significant role in that process. The European Union is particularly the crucial agent for the development of women's rights issues. There is much progressive legislation in the European Union regarding women's rights. The main sources of EC law consists of primary legislation, secondary legislation and case law about the women's rights.

The first rectification concerning the equality between men and women at the level of the Community was in the Treaty of Rome in 1957. In the Article of 119 there is a statement about the equal pay for equal work. Although 'the equal pay for equal work' was included in the Treaty of Rome, it was not executed during a decade after ratification of the Treaty.

Since 1957, equality between men and women has been one of the basic principles in the Union. The main targets of the European Union in this field are to guarantee equal opportunity and the equal treatment for men and women and

also to contend with all forms of discrimination on the basis of sexuality. Due to the revision of the Treaty Establishing the European Community, the topic of equality between men and women gained a more important status in the Treaty. As far as it is concerned, developing the equality between men and women is one of the basic duties of the Community, which aims to cure inequalities. Implementing the men-women equality in every level and phase of the whole policy, which is a strategy of establishing the gender equality in main policies and plans, was called gender mainstreaming, a main policy in the Community. The Article 13 of the Treaty⁴² delegated authority to the Council to struggle with all discriminations basing on the sexuality. According KA-DER, in the book of “Social Policy of Europe and Women’s Rights” (KA-DER, 2005, p.,18), arrangements, implementations, and the perceptions are the results of the historical development regarding the equality between men and women in the European Union, appearing on a economical union basis.

Turkey, as a candidate for EU, has promised commitments to reach at an equal treatment principle between men and women. In order to realize this, the Social Politics and Employment Section and Political Criteria Section of its National Programme was adopted European Union Legislation. This law came into force in 24 July 2003.

In this regard, we can say that European Union negotiation process has been an important driving force for gender equality reforms in Turkey. When examined in terms of the field of women’s employment, the impact and effective implementation of some Community programs need to be noted.

Within the European Union context, many projects began in Turkey on gender equality. The focus was the same as the UN projects, that is, economic life still had priority in EU projects and programmes applied in Turkey. As mentioned

⁴² Article 13 of Treaty Establishing the European Community; Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

chapter 2, the European Union was also an economic unit, subsequently, the focus was around the economic development and employment.

Main donors in gender equality area in Turkey are European Union and UN units concentrated on the projects related to the establishment of national data storing, knowledge building system, and research. Recently, the contributions of those organizations were significant in the development projects and the labor market policies. Especially, in the regions where unemployment and poverty pose a great problem, and patriarchal culture is more repressive over women (like in the Southeast Anatolia), most development projects and programs have begun to include a gender component. In other parts of the country, donor intervention tends to support vocational training, business management, training, and intensified job seeking and counseling services are in line with active labour market policy strategies. As in the UN'S projects, in EU's project, regional development is given a considerable importance. Furthermore, each project applied in the country has a strong support by the Turkish State and its apparatus.

For instance, the Southeastern Anatolian Project (SAP)⁴³ can be seen as significant among the regional development projects applied by the cooperation of Turkey and EU in the Eastern part of Turkey. It was initiated in 1970s to administer major irrigation and infrastructure restructuring in the region and turned into an integrated regional development programme in 1980s⁴⁴. Also, it dealt with the ways of developing women's participation in economic life. Due to its development agency role, the SAP administration in the region acts as an executive authority in the local and regional projects. Besides, SAP collects data and develops analysis and explores strategies and policies to increase women's employment. The administration has been doing this through multi-purpose-social-centers (MPSCs)⁴⁵ which are actually self-organizations of local women.

⁴³ Güneydoğu Anadolu Projesi, GAP

⁴⁴ You can reach more information in http://www.gap.gov.tr/gap_eng.php?sayfa=English/Ggbilgi/gnedir.html accessed on 03.10.2007

⁴⁵ Çok Amaçlı Toplum Merkezleri, ÇATOMs

This aims to develop means and organization to increase literacy, and engage in income generating activities. In line with their mission of integrating women into development, MPSCs try to introduce women to market activities through vocational trainings, business development trainings, support, and consultancy services. Their activities within the realm of women's employment are reported every year and in six-month periods on a consolidated basis (Fazlıođlu, 2002). These attempts are unique for SAP and locate the project in a different category that the other state organizations have reviewed so far in this work..

Another programme applied by the European Union is *Equal Opportunities for Men and Women Community Programme*⁴⁶ which aims to ensue adoption of the Community strategy for gender equality and supports activities contributing to this objective in the fields of economic life, equal participation and representation, social rights, civil life, gender roles, and stereotypes. The projects that would develop the regulative, institutional and procedural harmony of the EU and Turkish gender policies, are accepted and funded by the Programme which are coordinated nationally by the Ministry of Labour and Social Security. Some other labour market programs of the EU ought to be mentioned on the basis that they contain a gender dimension in their objectives and/or definition of their eligibility criteria.

Although all projects and programmes are not directly related to the gender equality, each project or programme applied and/or conducted by EU has equality aspects in itself. Margot Wallström, vice chairman of the European Commission, stated in the conference of "Women's Rights in the process of Turkey's Membership of European Union" hold in Bilgi University in İstanbul that "achieving the equality between men- women" is one of the prerequisites of having the European Union Membership.

As mentioned before, the Fourth World Women Conference held in Beijing in 1995 was also very significant for Turkey in that it made Turkey shift its policy

⁴⁶ You can find more information in <http://europa.eu.int/scadplus/leg/en/s02310.htm> accessed on 03.10.2007

to gender mainstreaming resulting in amending the discriminatory legislation. Indeed, it can be argued that Turkey's placing in the gender mainstreaming with two instruments, which are legislation and institutionalization, began with the Beijing Conference. After the Beijing Conference, another draft law was finally prepared by the commission and presented to the National Assembly in September 1998. However, the general elections held in April 1999, and subsequently a new commission had to be formed to finalize the draft code and its enactment law. It can be stated that it is not only UN Conventions and conferences that push Turkey into a more egalitarian situation within a gender mainstreaming but it is also the women's movements in Turkey the causes and supporters of which lead to the alterations in the legislations such as the reform of the Turkish Civil Code. However, Turkey's EU accession process can be evaluated as a trigger of these results since Turkey was officially named as a candidate for EU accession in December 1999, after the preparation of the Civil Code. Therefore, Turkey's accession to the EU might have accelerated the process.

There was a strong support by the EU in the legislative reforms process. Actually, it was interpreted that these supports are a kind of compulsion for Turkey to access into European Union as a member. In the foreign press, for example, especially in USA, Germany, Austria, France, England, Egypt, and Greece, news about the Starting of Turkey's Negotiation Process in relation to the Reformation of Turkish Criminal Code was on the agenda in September and October in 2004. EU Parliament Head, the Socialist leader M.Schultz stated "Reforms of Turkish Criminal Code is compulsory; until the reforms are realized, EU cannot open the way to the negotiation process with Turkey". In the foreign press there were speculations about the subject. Countries like England and Italy were considering Turkey to be sincere about the steps taken on the Turkish Criminal Code and accused EU of seeking pretext, whereas the others were insisting on the precondition of legitimization of the amended code (ASAM, 2003).

Since 1996, “man-woman equality” has taken place in the European Progress Reports in the part of “enlargement”⁴⁷. And the passage of “getting full membership does never eventuate without equal opportunity between men and women.”. As long as the legislation reforms are considered, in the European Reports, every amendments relating to the gender equality are evaluated in the reports as stating their deficiency bounding European Union. (ABİGM, 2002, 2003, 2004). However, Acar, the former chairperson of the United Nations Committee on Elimination of Discrimination against Women (CEDAW), thinks that;

equality between men and women limited by the EU acquis is an insufficient standard. Although equality between men and women is seen as a main trajectory in EU’s main documents, the EU acquis deals with the equality between men and women within the economic life. And she suggest to go beyond the “acquis” and “adaptation” criteria and to evaluate the gender equality in a multi-faceted manner. (Acar, 2006a)

To see the importance of EU for Turkey in respect of gender mainstreaming, Walby’s significant classification can be repeated as;

(1)- gender mainstreaming is associated with a range of processes including advocacy by civil society groups and movements within a country;

(2)- transformational advocacy networks;

(3)- epistemic communities and expert networks drawing on the legitimation of universal human rights;

(4)- isomorphic development within the European organizational field; legal compulsion from a transnational polity such as the EU;

(5)- legal necessity following other political decisions, such as joining the EU; a mix of forms of soft law and targets, as in the EU open methods of processes, such as pressure from national civil society groups in dialogue with transnational experts (Walby, 2005).

⁴⁷ Accessed on (<http://ekutup.dpt.gov.tr/ab/uyelik/ilerle02.pdf>, <http://ekutup.dpt.gov.tr/ab/uyelik/progre02.pdf>, and http://europa.eu.int/comm/enlargement/report2002/tu_en.pdf, 22.11. 2007

Like each country trying to put gender mainstreaming into practice in its own policy, Turkey takes part in that classification in the process of implementing the gender mainstreaming as being in the fifth (and the last stage) of the Walby's classification. Although the first four groups exist in Turkey in the process of appearing the gender mainstreaming, the most effective one was the "legal necessity following other political decisions, such as joining the EU".

4.3. THE IMPACT OF THE WOMEN'S ACTIVISM ON THE PROCESS OF LEGISLATIVE REFORMS REGARDING THE GENDER MAINSTREAMING

The second leg of the three-legged correspondence, women' activism, has a significant effect on the process of legislative reforms between 1998 and 2005 to mainstream the gender equality into the policy. As Kardam (1997) stated; "the aim of the social movements, particularly women's movement, is to enter the political realm and change the rules of the game in a way that takes the interests of its participants into account." (p: 174) Generally speaking, the goal of the international women's movement around the world is to empower women, and the movements ask for the help of governments and aid bureaucracies in this process. According to Kardam, the women movements have succeeded in putting gender equality issues on the state agenda.

The reason why women's activism is investigated in the thesis as a second leg of the correspondence is that the outcome of the policy is not only related to a need in contractual interaction between State and the International Organizations, but also to the nature of social movements, which are always in touch with the State and the international donors.

As mentioned before, in the context of mainstreaming the gender equality in Turkey, women's NGOs have had an effect on bringing and achieving mainstreaming the equality by their strong movements in the country. Therefore,

women's NGOs are evaluated as the second group of actors and one of the three-legged correspondence taking place in the gender equality policy aiming to achieve the gender mainstreaming in Turkey.

Essentially, to have a better understanding of the current position of women's movement in the legislative reforms, the history of the women's movement beginning from the late Ottoman should be evaluated. However, originally the movement after 80s, (i.e., the second wave) had more impact on that process.

1980s are critical years for Turkey in the context of women's movement and women rights. After the coup of 1980, a strict liberal policy took place in the state agenda as using the international discourse. International organizations began to be a strategically important target for Turkey to enter into. By the military coup in 1980, the political movements were restricted, even though they did not have any conflicted situation. Existing before the military coup, right and left political parties, NGOs were obstructed to have an interest in the policy of the state after the military coup. However, according to some writers in Turkey, such as Arat (1994), women's movement which introduced itself within the concept of feminism was not faced with a hard restriction by the army state. Ironically, the first group of women who identified themselves as feminists emerged in the political scene in the mid 1980s when the shadow of the military intervention was still politically felt.

After the military coup in 1980, women needed to carry their activism to the streets. As an aftermath of 1980, Tekeli (1986), Sirman (1989) and Arat (1994, 1997) evaluate women's organizations as multiplied and also diversified. It began with big public demonstrations, particularly campaigns, against domestic violence, which was the first big women's political organization having huge public demonstrations. Women's movement in Turkey started with the activities including home meetings, consciousness raising groups when it was illegal to organize in any form, press announcements and public demonstrations against sexual harassment.

Although there were still bans on organized political activism, the women groups went on struggling to collect signatures for a lobby that pushed the government to implement the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in a defeated political area and within the political vacuum that had been created by the military government in 80s (Arat, 1994, 1997; Sirman, 1989; Tekeli, 1986).

International policy of Turkey has helped create a climate for public debate on gender equality issues, in the recent years. The conjecture has acted as a catalytic force in the strengthened existence of a local women's movement which has gained significant expertise during last twenty years and it has been able to utilize this conjectural, social, and political interest in gender issues as an effective tool to successfully pursue the legal and policy reforms aimed at gender equality. This is exemplified in the impact this movement has had on the amendment of Civil and Penal Codes in 2001 and 2004 respectively. The effect of women's activism was especially seen on the process of legislative reforms on Penal Code. Women's groups in the country gathered around the common target in that process and founded a forum called Women Platform on the Penal Code. This platform and other individual movements acted together to amend the law in terms of banning the virginity test, violence, domestic violence, rape, marital rape, sexual violence, and honor crimes.

Besides, Women for Women's Human Rights (WWHR) began to coordinate a group on Penal Code from a gender perspective after the Civil Code reforms in 2001. Different NGO representations existed in that working group. In addition, some academicians and jurists from bar associations took part in the working group. The most important body was formed by this working group, which was the Women's Platform on the Penal Code. Nearly thirty women's NGOs participated in the platform, these are;

Amnesty International Turkey Branch, Ankara Women's Solidarity Foundation,
. Association for the Support and Training of Women Candidates, Association for

the Support of Sincan Community Center, Çanakkale Association to Promote Women's Labor, CEDAW NGO Forum Preparation Committee, Diyarbakır Bar Women's Commission, Edirne Women's Human Rights and Handicrafts Group, Filmmor: Women's Cinema Group, IRIS Equality Watch, Istanbul Bar-Women's Rights Enforcement Center, Istanbul Governorate Human Rights Desk, Istanbul Governorate Women's Status Unit, İzmir Bar Women's Rights Enforcement Center, İzmir Bar Women's Commission, „KATAGİ, Kibele Women's Cooperative, Okmeydanı Women's Atelier for Paper Art, Purple Roof Women's Shelter Foundation, Republican Women's Association, Turkish Women's Union, Women's Solidarity. (WWHR, 2003)

Firstly they began to work with the Turkish Penal Code and the penal Code Draft. After this work, they prepared an article including their recommendations and analysis and amendments in new formulated types (which were more than thirty). These proposed amendments by Women's Platform on the Penal Code against the AKP government's current draft in 2003 showed the deficiencies in the draft law as stated below;

The Penal Code Draft Law (WWHR, 2003);

- a- regulates sexual offenses under “Crimes Against Society”, instead of under “Crimes Against Persons”
- b- legitimizes “honor killings” and does not take preventive measures to eradicate these violent crimes.
- c- erroneously defines and names crimes of rape and sexual assault, implying these offenses are violations of one's “honor” and “chastity” rather than sexual and bodily integrity.
- d- sanctions marital rape.
- e- discriminates between married and unmarried women, virgin and non-virgin women.
- f- sanctions forced marriages and legitimizes rape and abduction of women.
- g- fails to adequately define the sexual abuse of children and assumes the possibility of consent on the child's part.
- h- legitimizes the killing of the newborn child born out of wedlock by the mother.
- i- the articles criminalizing so-called “Indecent behaviors” should be removed from the draft law.

- j- incompletely defines the offense of sexual harassment and does not recognize sexual harassment in the workplace
- k- the General Aggravating Circumstances for sexual assaults in the draft law exclude sexual assaults by security forces and sexual assaults under custody.
- l- does not criminalize the practice of virginity testing.
- m- the article of “Discrimination” in the draft law does not fully support the equality principle of the Turkish Constitution.

These articles were published and sent to NGOs, media, and all MPs. The origin thought of these recommendations was to recognize women’s ownership of their bodies and sexuality as individual. Also, this campaigns for the legislative reforms from a gender equality perspective.

The campaign of women’s movement on Turkish Penal Code went on nearly three years from 2002 to the end of the 2004. As stated in the second chapter, the Penal Code had more than thirty amendments and it led to a major step to achieve gender equality through the sexual and bodily rights of women and, of course, girls in the country. Women’s target about the legal reforms was to change the philosophy of the laws. That is, penal code was thought as a safeguard of women’s rights and the most importantly, their body and sexual autonomy.

Because of the fact that women’s organization has a big part in the legislative reforms in Turkish law, there is a serious campaign to implement these articles into the society. For that reason, especially the strong education programs, projects, and campaigns are arranged in the country after the legal reforms made by the women organizations. However, there is still a debate on whose responsibility it is.

In the workshop⁴⁸ held by the Heinrich Böll Stiftung Foundation in 2007, the responsibility of the State in gender mainstreaming was stated. It was cited as an

⁴⁸The debate on gender mainstreaming in Turkey, heinrich Böll Stiftung Derneği Türkiye Temsilciligi, İstanbul, The participants at the workshop are S. Nazik Işık (Independent) ; Akın Atauz (Independent); Nurten Canaş, Right Path Party (DYP); Seyhan Ekşioğlu, Association to Support and Train Woman Candidates (KA-DER); Zeynep Kılıç, Educational Reform Initiative,

unfavorable tendency that the State gives its responsibility of ensuring women's learning and exercising their legal rights to women's organizations. The reason of that is seen in the workshop report as;

The stances and actions intended to have the fields of service evacuated by the state refilled by the non-governmental women's organizations, emerging as a result of this kind of thinking, run contrary to the political struggle of the women's movement and produce the effect of diminishing, let alone increasing, the resources the state is supposed to allocate to women and the elimination of equality (p., 141).

In despite of the debates, the feminist movement has demonstrated a tendency toward institutionalization with certain tangible projects and efforts since 1990s. It was put forth to launch an ongoing relationship with both the local and central administrations. As written in "Women in Society" edited by Turk Haber Ajansı in 2005⁴⁹, the steady movement managed to establish their institutions with the assistance of interaction with state institutions. As a result of this process, many institutions such as women's libraries, women's shelters, consultation centers, periodical publications and women's research centers in universities, have started to emerge.

As far as the legislative reforms are concerned, the effects of women's movement were important with regard to the process of Turkey's accession into the EU. Like in other countries, women's movement is an important position in legislation and institutionalization of gender equality. Goetz states the importance of women's activism to institute the gender policy in the state policy by noting;

The form of state response to women's needs will vary according to the gendered history and politics embedded in institutional rules and processes. The form of state response to women's needs will also depend on the gender construction of the family and the degree of gender polarization in civil society and the

Özgür Sunata, Freedom and Solidarity Party (ÖDP); Sebahat Tuncel, Democratic Society Party (DTP); Ilknur Üstün, Association to Support and Train Woman Candidates (KA-DER); Fatma Nevin Vurgun, Association to Support and Train Woman Candidates (KA-DER); Saynur Gürçay, Heinrich Böll Foundation, Turkey Representation.

⁴⁹ Türk Haberler Ajansı, (2005), *Women in Society* in "Life in Society", p.; 422

economy. Other factors affecting the state's response to women's gender interests are the nature of state-civil society relations, the nature of women's activism in civil society, the degree of state autonomy and the basis of state legitimacy. These conditions add up to distinctively gendered political and policy opportunity structures (Goetz, 1995).

In this regard, and as Goetz also stated, nature of women's activism in civil society could be evaluated as a determinative unit for the state policy. The demand of women's movement in Turkey was that gender equality is to be a state policy in the country. Women organization representatives argued that as their demands were for the first time becoming a formal state policy with a circular, this was a very important development and added that they would monitor whether and how the circular was enforced.⁵⁰

4.4. STATE RESPONSIBILITY IN THE REFORM PROCESS AND IMPLEMENTING THE GENDER MAINSTREAMING IN TURKEY

The responsibility of the State in gender mainstreaming creates the core of the gender mainstreaming policy and the implications in a country. And as argued, state is the third group actors affecting the process of legislative reforms from 1998 to 2005 within the gender mainstreaming being in the three-legged correspondence. During this period, those three actor groups; international institutions (EU and UN), women's movement, and state, have actively took part in the process. However, the difference of the State from other actor groups is that State is directly responsible for making and implementing the laws. Therefore, the lobbying from women and international institutions to state shows the direction of the interaction among them. That is, the direction of the interaction has been towards State to affect its gender policy and to make the laws amendments to mainstream the gender equality.

⁵⁰ For more information; (<http://www.bianet.org/2006/07/01>)

According to Nelly P. Stromquist, for each country, regarding the needs a policy, the state established public bureaucratic structures which focus on specific social and economic sectors of the nation and also the standard bureaucratic units become ministries or departments. And also she states that

The state usually creates commissions or bureaux.. New issues are also incorporated into governmental bureaucracies through small units, which may expand over time depending on the perceived importance of these issues. Interested parties expect that the existence of such units will not only facilitate governmental action but it will also maintain public concern. Behind the creation of bureaucratic units, there is a Weberian justification that specialization and action on the basis of rational principles will enhance the efficiency of government. (Stomquist, 1998, p:85)

Stromquist calls this newcomer to government structures as WID (women in development) unit stating this unit's purpose as "to improve the conditions of women in all sectors of society by monitoring government work and by suggesting promising lines of action" (Stomquist, 1998). It is also evaluated as 'a single body or a complex organized system of bodies, often under different authorities, but recognized by the Government as the institution dealing with the promotion of the status of women' (p:85). The units interested in gender equality are multicultural, and multisectoral as well as they cover all governmental areas from agriculture to education in the legislation and institutionalization areas.

When we have a look at the public policy of Turkey about the incorporation of the gender issues, it has been there to establish women in development units in the

governmental bureaucracies for the last 20 years in Turkey. Especially, the government reports state the importance of the gender equality in their policies after the Beijing Conference. Besides, the applied policy is stated as the "gender mainstreaming".

According to Gemici⁵¹, the old State Minister of the State Ministry Responsible for Women's Affairs, Family and Child Protection, the inclusion of the concepts of gender equality into the main policy and plans is one of the basic strategies to achieve gender equality in Turkey. This strategy begins to work with realizing that traditional equality policies are insufficient to obtain equality between men and women. Therefore, it was underlined in the UN Third World Women Conference in 1985 in Nairobi and it became the backbone of the Fourth World Women Conference in 1995 in Beijing. In the final report of the Beijing+5 in 2000, it was widely accepted.

The strategy of establishing the gender equality in main policies and plans means the gender equality, which are a reorganization, redevelopment and reevaluation of the process of policy making and policy taking in every level and phase of the whole policy. In other words, this strategy contains the demands, benefits, skills, and capacities of men and women in each stage of the process of the policy making and policy developing.

Gemici (2001) clarifies *the strategy of establishing the gender equality in the main policies and plans, gender mainstreaming*, as it is a substantial policy because adopting this strategy means that equality is accepted as a necessity and a demand of the whole society. It means that matters and problems are evaluated and analyzed from the equality perspective. This comprehension creates opportunities to produce solutions, which are more effective, more extensive and more equitable and it facilitates to obtain the equality in real life. Also, he states that *the strategy of establishing the gender equality in the main policies and plans (gender mainstreaming)*, is not a concept which was not planned to replace the traditional equality policy on the contrary to the fact that this strategy and traditional equality policies are binary and compatible with each other. In this respect, while people, institutions and foundations that work to obtain equality between men and women, are trying to put the equality perspective into main policies and plans, they will continue to strengthen and diversify the institutional

⁵¹ From speech of former State Minister Hasan Gemici, a deputy from Democratic Left Party, in "Conference on Gender Mainstreaming: Experience of Holland" 16 May 2001

mechanisms and constitute the legal basis and they will also continue to prepare the action plans. According to him, Turkey's *strategy of establishing the gender equality in the main policies and plans (gender mainstreaming)* has binary structure, which is legislation and institutionalization.

While state has been chosen as the third group of actor in the first stage of the gender mainstreaming process, namely the legislative reformations, in Turkey, in this thesis, it is intended to define the gender mainstreaming policy in Turkey focusing on the legislative reforms mentioned in the third chapter. However, the second leg, institutionalization, supports and puts the legislative reforms into practice. And, due to this institutionalization part existing in the state structure, to make it clear, the institutions taking part in the stage of legislative reformation in the subject of gender mainstreaming will be tried to be signified.

In the other words, the victory of the legislation reforms asserts itself in the society and in the structure of institutions, which was founded and created to implement the reformative laws. While the institutions are the outcome areas of the gender mainstreaming after the legislative stages, the contributions of the reforms as embodying them and creating new bodies and sub-institutions so as to implement them should also be noted. Thereof, state, one of the legs of the correspondence, could be said to be the main implementation actor of mainstreaming the gender equality as the lawmakers are actors of that.

The politics depending on the legislative reforms on gender equality and the institutionalization process of the gender mainstreaming in Turkey has occurred in the State since after the Beijing Conference in 1995 in a written form. However, the implementing form of the policy goes only back to the beginning of 2000s. Especially, it began to be seen in National Programme of Turkey, particularly encompassing the “opportunity equality”.

The whole short and the medium term goals in National Programme presented to the EU relating to ‘opportunity equality’ can be evaluated as one of the application of the gender mainstreaming which is a strategy of establishing the gender equality in the main policies and plans. Putting the equality perspective in

arrangements in the short and medium term goals in National Programme can be evaluated as the affirmative solutions of that strategy. In the Political Criteria Section of the National Programme⁵², the AKP government accepted to ensure ,as a priority, to complete equal provisions of all human rights, freedoms and cultural rights without any discrimination and promised to provide gender equality measures in the medium term goals. Besides, it was also remembered in the Prime Ministers Statement on the 59th Government Program⁵³ that the provision of gender equality was one of the prior subjects of the government program.

However, establishing the gender equality in the main policies and plans, gender mainstreaming, is not restricted to the National Programmes and government policies in the State stance. The institutions are also other mainly responsible actors one by one as the gender mainstreaming truly begins to be implemented by the institutions' policies and applications.

There are some discussions about what the main area of the problem stemming from the gender inequality is. According to Işık, some people claim that it is a “women problem” and the solution exists in the social tools (Işık, 2007). However, Işık denies that idea asserting that this kind of ideological approach has a negative effect on the capabilities of the state since it weakens and blocks the possibility of mainstreaming these problems and their solutions. So, for that reason, according to Işık (2007), it is necessary to analyze and evaluate the differences taking into consideration in every area, from state to policies to local practices. Also, she advises that its potential impact and outcomes on women should be considered.

As far as the equality policy is concerned in the country, some institutions and some units have been founded by the governments for putting into the effect the new legislative reforms and for implementing its policy. Especially, some

⁵² In the part of 1.2.11 in EU National Programme, Political Criteria; (Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms)

⁵³ (<http://www.byegm.gov.tr/hukumetler/59hukumet/hukumetprogrami.htm>), Office of the Prime Minister, Directorate General of Press and Information accessed on 01.04.2007

institutions and units like; DGSPW, the State Planning Organization, and the Turkish Statistical Institute and some Ministries such as Ministry of Education and Ministry of Health and the local administrations such as Municipality will be evaluated in this regard.

Mainstreaming a gender perspective into all policies, programmes and plans in Turkey have been an ongoing endeavor to eliminate prejudice and practices that sustain negative gender stereotyping. Through the last reforms in law, the legislation side of mainstreaming the gender equality has been completed on a large scale. However, putting these laws into practice and institutionalization of gender mainstreaming have been in their initial stages. After the 90s, they began to be experienced in women-oriented institutions in the state structure. Institutions were founded by this manner to get the gender equality policy to spread into the society through the rules and laws made for providing the gender equality.

This process definitely should have a transformative feature. The main target of that policy change and law amendments is to transform the society as discussed in the first chapter. Also, the actors, the units, and institutions in this transformation process are linked each other, which causes difficulty in categorizing..

As mentioned in the introduction part of the thesis, gender mainstreaming is divided into two stages, “legislation stage” and “institutionalization stage” On this account, institutionalizing the gender equality in the public is an indispensable step for the gender mainstreaming and also, it is a more difficult step than that of the legislation because it has larger and longer situations. Legislation stage starts earlier and then comes the institutionalization stage to accompany the legislation one. The implementation of the laws having gender equality norms and gender equality policy begins through penetration of them into the institution. However, the implementation of gender mainstreaming in an institute or in a ministry is not clear and pure one because of its specialties linked with other policies. As Rees states;

Gender mainstreaming is usually used as a policy approach when the framing of the gender equality issue is linked with or integrated into another agenda. Hence, gender mainstreaming can be seen as a tool for delivering policy on an altogether different agenda, such as economic development or combating poverty (Rees, 2005).

To understand more clearly the process of gender mainstreaming in Turkey, state organizations and institutions are analyzed in a descriptive method. Then, it is proceeded to examine units and their roles in state policies and priorities. Certain organizational principles should be emphasized to understand their effects on the institutionalization of the gender mainstreaming in Turkey.

4.4.1. State Planning Organization

The first structure was seen in the structure of the Directorate General of the State Planning Organization (SPO)⁵⁴. The “Advisory Body on Women Policy”⁵⁵ was founded in the SPO in 1987 in Turkey. In the 5. Five Year Development Plan, SPO made every segment individual programs because it was targeted to access the whole social segments with the needed coordination and support services. A decision was made in 1985 by SPO to constitute a sector about women through the international agreements and decisions and it was about social developments. “Women’s Sector” has also been incorporated into the activities of the State Planning Organization, which determines national targets for education, teaching, employment, and health and formulates strategies, measures, and policies in accordance with these targets. It is the first formal national mechanism undertaking the responsibility of making a sector of women case and putting the policy measurements about women in five year’s plans (KSGM, 2004). This body also develops and administers five year development plans and annual programs that include gender mainstreaming activities.

⁵⁴ Devlet Planlama Teskilati (DPT)

⁵⁵ Kadına Yönelik Politikalar Danışma Kurulu

Education, health, work life, social security, and employment were the main points of the Plans until the Seventh Five Year Development Plan. The Seventh (1996-2000) and Eighth (2001-2005) Five Year Development Plans are the most critical ones about the legislative reforms. It is claimed that Seventh Five Year Plan had specific plans on the amendments in Civil Code and Penal Code. It calculated these arrangements in the section of “Legal and Administrative Arrangements”. In this section, some subjects directly related to the inequalities in the law are counted such as head of the family, surname, representation of the marital unity, legal procedures, marriage age, property system, profession and arts of the spouses, inheritance, material possessions, and civil marriage. Also, in the subject of the marital possessions, it touched on the principle of equal separation of properties acquired during the marriage between spouses in case of the divorce. Some points providing equal division of domestic responsibilities and equal participation of women in social life are dealt with. Furthermore, preventing the women from breaking off the work life due to pregnancy and maternity leave, and also providing them with adequate nursing opportunities for the children of working women are the other subjects dealt with by the Seventh Five Year Development Plan.⁵⁶

Like the Seventh Five Year Plan, the Eighth Five Year Plan has also some preparation on education, health, work life, social security, employment, and the legislative situation of Turkey in a gender equality manner. The plan outlines the changes to be made in the Turkish Civil Code, in the section of “Legal and Organizational Restructuring”. No sooner had the law been amended and come into effect than these plans were proclaimed. In this sense, the importance of the Five Year Plans’ strategy on the gender mainstreaming, especially the legislative reforms of Civil and Penal Codes and the Labor Law can be seen.

⁵⁶ Yedinci Beş Yıllık Kalkınma Planı 1996-2000, T.C. Başbakanlık Devlet Planlama Teşkilatı Müsteşarlığı, Decision No: 374, Decision Date: 18.7.1995, for more information; <http://ekutup.dpt.gov.tr/plan/plan7.pdf>

4.4.2. The Directorate General on the Status of Women

Another unique institution regarding the implementing the gender equality policy into the society is the Directorate General on the Status of Women founded in 1990 in Turkey. It was a kind of coordinating agency and it became affiliated with the Prime Ministry in 1991. It conducted various studies in order to protect and develop women's rights. Also, based on the State power, it has been conducting studies to strengthen the position of women in social, economic, cultural, and political life by providing them with equal rights and opportunities without an organization law. The new organizational law adopted on October 27, 2004 changed the name of the agency to the "Directorate General for the Status of Women.

Regarding its foundation, national and international factors were very efficient in the first stage. CEDAW, Nairobi Strategies and 6. Five Year Development Plan necessitated to find a coordinator about women or a performance unit. Considering these demands, it was established as a national mechanism to develop and implement policies regarding women. The Directorate General on the Status of Women (DGSW) was founded in order to help women win their deserved status in the equality of public and private areas.

The Directorate is charged of fulfilling the actions being a basis for the main policy and programs to eliminate all forms of discrimination against women, improve the women's rights, activate women in every side of the economic, social, and cultural life and to provide equal profit from opportunities of the development for women. (KSGM, 2004) However, in the response of the Republic of Turkey to the questionnaire on Implementation of the Beijing Platform for Action in 1999 it was stated that

The Directorate General was established in the political conjuncture during which the women's movement was not adequately consulted. Therefore, the DGSPW mission statement contained some conservatism in its gender

perspective which led to intensive criticisms at the civil society level. (KSGM, 1999)

On the contrary, the Directorate General on the Status of Women is still the most important unit in the state of the institutionalization of gender mainstreaming in Turkey because it is a policy formation and coordination organization under the Office of the Prime Ministry. As that institute is the closest one to the top of the policy making level, the Directorate's hierarchical status enables the national mechanism to work efficiently in mainstreaming a gender perspective into all public policies as stated in the Beijing Platform for Action. Although the General Directorate has not got organizations on the regional or local level, it can cooperate with all regional and local level public organizations. As the General Directorate is connected to the Office of the Prime Ministry, it has a hierarchical status. Then, penetrating the gender equality norms into every level of the policy and administration has not been accomplished.

The Directorate has a unique area to increase women's participation in social, economic, and political decision-making. Some of the *purposes and the duties* of the Directorate General on the Status of Women (KSGM, 1997) can be listed as:

- Improving the educational level of Turkish women,
- Enhancing the participation of women in the economic life particularly in the agricultural, industrial and service sector,
- Ensuring health also social and legal security,
- Establishing and improving the status of women in terms of equality in the social, economic, cultural, and political areas
- Formulating the policies and programs that conform to Atatürk's principles and reforms
- Contributing to the integration of women into the society through participation in social, economic and political decisions as well,

- Compiling studies and statistical data by age and gender, made in Turkey or abroad on the status and problems of women, to provide as a basis for the resolution of problems related to women,
- Assisting the cooperation and coordination between concerned agencies for their communication, and supporting voluntary associations to make them more active in this field and to follow all activities of local governments regarding women, especially supporting the education activities for women particularly those of local governments, and creating a public interest in women's status and problems to raise the public awareness,
- Providing for Turkey's participation and coordination in international workshop,
- Being involved in activities of documentation, publication and presentation of women's issues.

To fulfill these duties and purposes, some special commissions on health, education, employment, and law were established in 1997, following up the Beijing Conference. These Special Commissions bring together related non-governmental organizations and have functioned as consultative bodies for the implementation of the National Plan of Action. Furthermore, DGSPW has also been involved in the National Programme for the Enhancement of Women's Integration in Development financed jointly by the Government of Turkey and the United Nations Development Program (KSGM, 2003).

As far as the budget is concerned, while the Directorate General on the Status of Women is a public organization, it is financed from the national budget. It does not have a separate one and it may prevent independent work. Nevertheless, the Directorate General, in cooperation with international organizations, receives technical assistance and international funds for the implementation of international projects (KSGM, 2003). In other words, most of the financial resources are provided for the international project financed by international organizations.

In addition, the Directorate General on the Status of Women conducted various projects with resources provided by international organizations and used these resources for the formulation of policies regarding women in the country. Some of the projects (KSGM, 2003) conducted by DGSW with an international supports are below;

- “The Women’s Employment Project” which is a subsection of the Employment and Training Project supported by the World Bank,
- “The Micro Enterprises Project” financed by the donation provided by the Japanese Grant. Fund through the World Bank
- “The National Program for the Enhancement of Women’s Integration in Development” which is a collaborative project of United Nations Development Program and the Turkish Government

In the responsible areas, DGSW is in collaboration with public bodies and organizations, local administrations and NGOs. It has an important function to constitute a network between these organizations. As a result of the efforts of the Directorate General on the Status of Women and the coordination of DGSW and other government institutions and organization, the women issues were placed on the national agenda, It could facilitate the policy changing in the women issues depending on the international policy changes. Each stage of the international decisions and state decisions a national institution or government department took part in that coordination. The government departments such as Ministry of Health, Ministry of Agriculture and Rural Affairs, Ministry of National Education, Ministry of Justice, Ministry of Public Works, Ministry of Industry and Commerce have been involved in carrying out gender-sensitive activities and conducting work on women’s issues.

To mainstream the gender perspective into all policies, plans and programmes in Turkey, the DGSW aims at formulating and implementing its programmes and activities in collaboration and coordination with other governmental entities, non-governmental organizations and gender and women’s studies and research centers

and programmes within universities as well as other relevant organizations (KSGM, 2003).

4.4.3. Turkish Statistical Institute (Turkstat)

Before changing a specific policy and its unequal nucleus, it is a fact that it is essential to investigate the current situation. For that reason, collecting data to analyze the actual frame is necessary at the beginning of the policy making process. In the context of the gender equality policy, it was needed a unit to collect the data in terms of gender sensitiveness. In Turkey, the responsible institute for collecting sex-disaggregated human resources data is the Turkish Statistical Institute. In 1990, Turkstat, under the name of The Statistical Institute of the State (SIS), started to represent existing data from various fields to reflect women's position and problems. It established the Social Structure and Women's Statistics Department in 1993. It also created a programmed database on women's statistics and indicators, known as the Gender Data Bank.⁵⁷

One year before the establishment of the Women's Statistics Department, the INSRW (United Nations International Research and Training Institute for the Advancement of Women) stated that it demanded on setting up a gender data base, in the seminar "Women and Statistics" which was organized in cooperation with INSTRAW in 1992. In this context, in 1993, the Department of Social Structure and Women Statistics was established within the body of the State Institute of Statistics (Turkish Statistical Institute) with the support of international projects conducted by the Directorate General on the Status and Problems of Women and with the support of "The National Program for the Enhancement of Women's Integration in Development". While establishing a new Department dealing with the Women Statistics, the main target was to develop a database relating to gender.

⁵⁷ Equal Employment Opportunities in Turkey, accessed on <http://www.ilo.org/public/english/employment/gems/eo/law/turkey/sis.htm>, 18.08.2007

In 1998, DGSW and division of the Women Statistics collaborated on a project supported by UNDP developing a gender statistics and indicators database, particularly spotlighting on demography, family structure, education, and employment. The Turkish Statistical Institute is revising its data collection approaches from a gender perspective and developing participatory research and project implementation methodologies. As far as the project is concerned, DGSPW and SIS signed a protocol to develop a reliable “Database on women’s Statistics and Indicators” essentially to

produce and evaluate national and international policies which are directed to determine women’s positions in the society, to specify their problems and to make stronger women’s participation in socio-economic development and that will consist of all statistics compiled on women’s issues (KSGM, 1997).

According to an interview made with an expert⁵⁸ working in the “Gender Statistical Team” in “the Group of Population and Demography” under the “Presidency of Social Statistical Department” in the Turkish Statistical Institute, the staff in the Gender Statistical Teams were trained about the gender equality. And the Institute, Turkstat (SIS) collects all kinds of gender-based statistics describing the human resources. Although it is not in a chronological manner, gender based fundamental data on population, education, labour force and such can be acquired. The current goal to achieve in women’s statistics is to compile the data already existing in various data resources, and also, to perform progressive analysis within the framework of new theories related to women and to design new research studies to unveil women’s identity and problems.

⁵⁸ Interview with Meltem Demirci head of “the Group of Population and Demography”

4.4.4. Ministries

Other units which directly aim to fulfil the gender mainstreaming in their structures are the Ministries. The whole Ministries will not be described here, yet, the most important ones which are the Ministry of National Education (MoNE), the Ministry of Health, and the Ministry of Agriculture and Rural Affairs (MARA) will be depicted in this part.

The reason why these Ministries have been chosen is that the Ministry of Education and the Ministry of Health are the directly related to the second and third commitments accepted in the Beijing Conference, which are;

- Increase in the compulsory basic education from five years to eight years compulsory basic education
- Reduction of maternal and infant mortality rates

And the Ministry of Agriculture and Rural Affairs is closely related to the development of a country in an economic perspective, especially the international projects and plans run by UN and EU firstly cooperate with the MARA, particularly in the South Eastern part of the country.

4.4.4.1. The Ministry of Education

The Ministry of National Education is the most participatory ministry in the process of institutionalization of gender mainstreaming in Turkey. The MoNE identifies the achievement of gender equality among its priorities within the framework of reorganization of its working methods and procedures. In this regard, considerable progress has been endeavored to integrate a perspective of human rights, particularly of women and children, into course programmes and in the process of reviewing textbooks in order to eliminate discriminatory

statements, images and the like. While the education is the first step to get gender equality, approximately whole project and programmes to mainstream gender equality work with the supports of MoNE in the country.

The most important turning point is *the transition to eight-year compulsory basic education* depending on the commitment in Beijing Declaration. In 1997, compulsory basic education was extended to 8 year and classified as primary education. At the beginning of this major reform, it was expected that the average duration of education would increase among women and adolescent girls would be kept in the education system longer. Thereby, this would prevent their early marriages and pregnancy. According to Acar, it provides them with enhanced opportunities and freedom to make choice of their own (Acar, 2006b, 2006c). And she states that eight-year compulsory education will prevent their early marriage and pregnancy. (Acar, 2006c, p:84)).

According to the Millennium Development Goals Report of Turkey, a significant increase in enrollment rates for both boys and girls is observed between 1997 and 2001, compared to the 1990-1996 period. After 1997, the net enrollment ratio increased by 11% for girls, 6% for boys, and 9% in total. With the inclusion of lower secondary in compulsory education the gap between genders has been narrowing.⁵⁹

International organizations were also very effective in the process of transition to Eight –Year Basic Education, especially the commitment accepted in the Beijing Declaration and Platform for Action, “to increase compulsory basic education from five to eight years, and eradicate female illiteracy (28.9% in 1994) by the year 2000”, played an important role as a binding clause. Such international organizations, UNICEF, World Bank, EU, directly contributed to the process through financial support, education and campaigns with a gender mainstreaming aspect.

⁵⁹ Millennium Development Goals Report Turkey (2005)

However, the commitment about eradicating female illiteracy has not been totally achieved in Turkey. According to Acar (2006b, 2006c), one of the main deficiencies of women's education is that the level of secondary school enrolment for the female children has always been the relatively low levels. Certainly, this has been attributed to economic and cultural factors of the country. This economic and cultural structure prevents the female children from attending school after compulsory basic education. Thus, it would be aimed that the enrolment levels of the female children will rise with the transition to eight-year compulsory basic education from five year and with the family educations.

It was also expected that the law will ensure that the critically aged female children will remain in the education system for a longer period and thereby enhance her awareness of her individuality (Acar, 2006b). In addition, it is planned that the female children - who follow only 5 years of compulsory basic education could be swayed into different vocational education fields by conservative or poor parents and communities- will now have enhanced opportunities and freedom in their choice of secondary, tertiary and vocational education. Eight-year compulsory basic education is also expected to rise the marriage and childbirth ages by keeping the girl child in the educational system for a longer period (KSGM, 1999).

4.4.4.2. The Ministry of Health

One of the commitments made by Turkey in Beijing Platform in 1995 was on the reduction of maternity and infant mortality. Due to this commitment, the Ministry of Health took part in many projects and programmes mainstreaming gender equality concerning women's health.

The basic one is the Mother-Child Health and Family Planning Programme. Moreover, the Ministry of Health undertakes numerous projects throughout the country to improve reproductive and primary mother-child health care,

particularly in the less developed regions and poorer segments of the society. It was not only a problem caused by health but also by low or non education. Economic reasons also prevent women from coming into contact with the health experts. And another reason is the obstruction of spouses on the ground of the cultural reasons. Therefore, different expertises from education, health, religion, women's organizations and governor participate the programmes and projects. Surely, psychotherapists and psychologists are very important for transferring the gender equal methods into the society (Güçlü and Adak, 2002). It is a fact that the Ministry of Health does not undertake these projects alone, but in collaboration with the civil society and the universities, as well as international organizations. Some of them are (KSGM, 2003);

- *Safe motherhood programme*; it targets to reduce maternal and infant mortality rate and to give on the job training. Safe motherhood programme is the second commitment made by Turkey in Beijing Platform in 1995. it aimed the reduction of maternity and infant mortality. Due this commitment, the Ministry of Health took part in many projects and programmes mainstreaming gender equality as concerning women's health.
- *International Reproductive Health Training Center*; it plans to provide training programmes on reproductive health by GOT-UNFPA
- *Reproductive Health Programme*; it was undertaken as a multi-purpose programme between 1997 and 2000. It deals with the training of health experts and family planners. It gives Psychotherapy on contraceptive to couples and upgrades facilities that provide primary mother-child health care to Women's Health Centers equipped with modern medical technology and surgical intervention,
- *GOT- UNFPA third national programme (2001-2005;)* it targets to improve reproductive health by training and raising awareness, institutional capacity building, generating knowledge and data, among others. The project is a

collaborative effort involving Ministry of Health, Ministry of National Education, Science Academy of Turkey, State Planning Organization, State Institute of Statistics and DGSW.

For training programmes, Multi-Purpose Community Centers (MPCCs/ÇATOMs) are generally used. They are centers working with women in urban areas and women in rural area of South-eastern Anatolia Region of Turkey (Fazlıoğlu, 2002). It was founded in line with South-eastern Anatolia Project, Sanliurfa Governor and UN. The aim of them is to encourage women rigging to increase women's participation in the social area. This centers are very appropriate for Mother-Child Health and Family Planning Programme in the south-eastern of Turkey. This kind of applications on health can be evaluated as a gender mainstreaming due to their penetration into every level of the policy through cooperation among such institutes.

4.4.4.3. The Ministry of Agriculture and Rural Affairs

The Ministry of Agriculture and Rural Affairs is mandated to provide good farming methods and introduce appropriate technology to rural communities in order to increase farm income and level of productivity in crop and livestock production. Although women are able to benefit from these services, production oriented extension has tended to be a male activity provided by male agricultural technicians for male farmers. Additional programmes existing in the ministry aimed at rural women have tended to concentrate on home economics courses (KSGM, 2003).

In this context, to mainstream gender more effectively into its extension work, in 1997 MARA established a Women in Rural Development Section within the Directorate General of Organization and Support. The Women in Rural Development section serves as central body within MARA to plan the agricultural extension and home economics programmes for rural women and monitors their

implementation through the provincial and country level extension units. There are more than 1.200 female agricultural technicians employed by MARA, which is clearly insufficient given the central role women in agricultural production (KSGM, 2003).

The farmer education and extension services provided as part of MARA's regular work programme, planned rural development projects are implemented to focus on priority issues and areas by the units in the Ministry according to the Ministry's network. However, two experts officially working in the Women in Rural Development section were interviewed in the Ministry. According to them, this section just works on the development projects, the priority of the section is just to develop the rural areas in an economical manner. The only priority applied in projects is the educational one. The reason of this priority is that the rate of non-educated women is very high in rural areas. When experts were asked in the Women in Rural Development section whether a women-centred policy has been initiated in their projects and programmes, the response was very amazing. According to them, there were not any discriminatory applications and implications in their policies. They give the main support to anyone working in the field. Although, there is a unit in the Ministry of Agriculture and Rural Affairs to mainstream the gender equality, the staff in the unit are far from the gender sensitiveness. Also, it shows that the implementation of the gender mainstreaming in the ministries is insufficient, the word of women at the beginning of the that section is only on the papers and on the doors.

Although some gender equality units were established in almost every ministry, validity of these units is to be doubted. In appearance, the existence of the equality units is clear; however, in practice most of these units in ministries do not have any activity or any contribution to the implementation of the gender equality policy in their policy area.

4.4.5. Local Administrations

According to Working Party on Local Policy of KA-DER⁶⁰ local administrations exist to meet the social, socio-cultural, and economic needs connected with the living space. In this respect, it could be stated that the closest politics to the society is the local administrations. Local administrations have to keep to the right of our living, working, and having dwelling in a reliable, healthy, regular, and planned periphery. Local administrations have to provide us with the rights of equal benefiting from health, education and socio-cultural activities. As well, they are responsible for comfortably walking around the living space. While fulfilling these responsibilities, they get us to participate in the decisions on settling and to inspect the acts.

In municipal councils and provincial councils being the decisions councils of the local administrations, women are only represented by the rate of %2. Merely 18 mayors are women among 3234 mayors. However, the rate is 1/5 in EU countries. The representation rates of women in municipal councils are %40 in Sweden, %30 in Finland, %23 in the Netherlands, and %22 in Italy (Alkan, 2006). Furthermore, in EU countries, there are “local equality offices” which evaluate the applications in terms of gender equality, which do not exist in Turkey, in local administrations. The women enterprises in the planning bureaus of local administrations in England provide the design of city plans regarding to women needs. These are the examples of institutionalizations of democratization and gender equality in local administrations, which do not exist in Turkey, in local administrations.

The Working Party on Local Policy of KA-DER evaluate the Turkey’s local administration as follow;

- The special measurements were not taken to increase the women’s representation in local administrations, which had not increased for 75 years.

⁶⁰ Includes Aksu Bora, Ayten Alkan, Ceren Işat, Fatma Nevin Vargün, Ilknur Üstün, Nazik Işık, Sema Kendirci, Serpil Sancar, Yıldız Tokman, Yüksel Mutlu

- The tools to maintain the rights of working women in cities and the rights to obtain information are restricted.
- The priority of the services for women depends on the initiative of the administrators in respect of facilities of the local administrations.
- It was not stated that taking measurements for women's empowerment is important when services, made by local administrations, are made private. With the privatisation in local, women face with prize, which they cannot pay. It causes women to be away from the services.
- The mission of opening the protection house for women and children that is the unique arrangement directly for women, has not a legal security in terms of budget and staff.
- Legal requirements for making policies specially on men-women equality, which look over the local services as being sensitive and interested in their problems, did not take place in local administrations in Turkey (Alkan, 2006).

The right stated in the citizenship contains every person living in the same periphery. However, including women in reality depends on the amendments organized within the life conditions. Women living in a place has right to benefit from local services as other citizens.

As promoting and encouraging gender sensitive policies and programmes throughout the public sector, the DGSW established communication networks within all relevant ministries. According to 4th and 5th combined report (KSGM, 2003), a good practice that has emanated from this initiative is the creation of status of women focal points within Governor's offices at the provincial level. Although only 14 such focal points have been established and although they are by and large under staffed and under financed. As local administrations are closer to the people rather than central administration in terms of services, they would be more effective and successful in implementing and penetrating the gender mainstreaming in society by its institutions.

In this chapter the actors and their roles in the legislative reforms concerning the gender mainstreaming have been demonstrated. In sum, it is argued that legislative stage, which is the first stage of the gender mainstreaming had three effective actor groups in the reform process, being international institutions (EU and UN), women's groups in the country and State, which is called "three-legged correspondence"

Those three actors are effective on the amending process. After the legislative reforms have begun to be created, the new gender equality laws start to affect the state and its institutions to mainstream the gender equality. However, the institutions are still insufficient to implement gender mainstreaming because they have not penetrated gender equality yet. Having no gender equality sensitiveness at all , it can be argued that gender mainstreaming in Turkey has just started by the legislative reforms within the gender equality through implementing those laws and its gender equality mentality in institutions to transform the social norms.

CHAPTER 5

CONCLUSION

The main aim of this study was to describe the process of legislative reform of gender mainstreaming between 1998 and 2005 in Turkey. In Turkey, gender mainstreaming went through a binary structure; legislation and institutionalization. This study was based on the idea that legislation stage exists in the critical position and determines the institutionalization stage, therefore the legislative reform process has been chosen as the main descriptive area. As given Figure (2), this legislative process is not a process in which only the state is responsible actor to decide and apply policies of gender mainstreaming. In the thesis, three actor groups are identified in a relation called “three-legged correspondence”.

International organizations (especially the EU and UN), the women’s movement and state stance are the actor groups laid in the three-legged correspondence. The process of legislative reforms between 1998 and 2005 in Turkey on gender mainstreaming has been traced by considering the relations among these three actors.

The Role of International Institutions

The international institutions affect the process of legislation through three ways:

Firstly, there was a direct effect of the international organizations on legislative process depending on the gender equality base. Especially, the UN has a direct effect on the laws through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to the commitment signed

in Beijing Platform in 1995, Turkey promised to withdraw the reservations on CEDAW, which had been put for contradicting with laws in force. The decision of withdrawing the reservations meant to directly re-regulate and amend the national laws. For that reason, by 2001, the Civil Code was amended by an equality perspective between men and women in the family.

Secondly, the effects of international organizations on the legislative reform process also materialized through the state. Herein, it is seen that the EU's effect on the process. Because Turkey is a candidate for EU membership and in the negotiation stage, implementing the reform package of EU was of the first priority for governments. Before the Brussels European Council meeting for opening the accession negotiations on 17th December 2004, the AKP government was willing to put the adultery in the Penal Code despite the women's movement, the government changed its mind at the last moment before the meeting and decided not to put the adultery in penal code considering the 17th December. Therefore, EU played a very significant role in the legislative process affecting the government through the state policy on EU membership.

Finally, the effect of international organizations on legislation became evident through the relation with women's groups in Turkey. The root of the women's groups to achieve the gender equality was nourished from international human and women rights. UN and EU played a supportive role in the process of women's lobbying for amending the penal code. While preparing the draft of the penal code by women and lobbying for that, EU countries, and UN provided a serious financial support for women's movement in Turkey.⁶¹

⁶¹ In the amending of penal code duration, there were the signatures of the ambassadors of Norway, Sweden, Canada and Denmark under the posters of the Flying Broom (one of the women NGOs in Turkey) "Turkish Penal Code is Changing! Then, Go On to Struggle.". Thereupon, the authorities of these countries were invited to the Ministry of Foreign and warned as "do not interfere to our internal affairs". After that while Sweden, Canada and Denmark do not do anything, Norway said to Flying Broom "do withdraw our name otherwise we cut your finance source"

The Role of the Women's Activism

In addition to these, the women activism has a three-fold effect on legislative reforms which have direct effect on the legislations, with the support of international organizations and the state. First is the direct effect of the women movements on the legal reform; they have tried to prepare alternative drafts against that of the government and publicized it through media, NGOs and the deputies to illustrate the main problems or deficiencies of the government draft. These alternative drafts are included in more than thirty articles and most of them have been implemented.

Secondly, women's movements affected the process with the international organizations' support. The women's movements continuously collaborate with international organizations as the material and legal supporters to accept and implement the positive discrimination for the gender mainstreaming and the gender equality on the laws. While the women movements play an important role as a pressure group on governments, they were especially active in bringing the literature of international concepts, human rights and women rights to Turkey.

Thirdly, women movement's effect of the legal process is achieved through the state by lobbying in it. The women's organizations shaped the process with lobbying activities. This pressure on the government to abolish or adopt some articles in the penal code has been eventuated with reference to EU process or EU instructions. For instance, according to the annual report of gender equality to start the deliberation between EU and Turkey, it has been impossible to get full membership without achieving the equal opportunity between women and men. After the Helsinki Summit on 10 December 1999, this restriction was used as the struggle vehicle by the women movements in the process of amending the penal code.

The Role of the State

Considering the state stance about the legislations, it should be remembered that the state has been effective due to the principle of responsibility since the changes and creations of the laws belong to the duties of the parliament. However, even though the main post being the state, we have to consider its effectiveness in a matrix of foursome relations unlike the other legs of the correspondence. Laws helped the state to be reconstructed due to gender mainstreaming and its institutions are formed accordingly. The state makes the laws and afterwards in the process of their implementation, institutions of the state are reorganized. Thus by means of the legislation process there occurs a bilateral as explained below;

Firstly, the responsibility of the state in the legislative reform in order to reach gender equality in the governmental and institutional level appeared for the first time in the context of international relations. The signatures put and the commitments made in the international texts were the priority factors in adoption of the gender equality laws in Turkey. Even though in appearance the UN only holds a position of asking for financial compensation, the international respectability and credit as well as the candidacy for EU determined, affected and directed the state politics in the area of gender equality.

Secondly, when we look at the relation of the state with the women's movement, we can talk about a togetherness not to be denied in resisting the government. This relation in the legislative frame has not taken place without the international organizations. The most important tools the women's organizations used against the state stance were the UN conferences, CEDAW, and EU membership talks.

Thirdly, the state duty of modifying the laws was realized directly by the parliament. The results were achieved by the interactions above. Besides, the efforts of the institutions within the state such as the Ministry of the State Responsible for the Women and the Directorate General on the Status of Women (DGSW) helped the requests of the NGO's to be taken into account.

Finally, unlike other legs of correspondence, the legislations towards gender equality have clauses which have effects at the state level during implementation as the state is held responsible for protecting the equality between men and women. To make these rules mainstream, administrative units in the state level and units aiming to reach the equality in the governmental level have to be founded.

This last paragraph which is transforming the institutions and policy depending on the new new Codes and Laws, is the transition phase of the gender mainstreaming into the institutionalization stage. Actually, the legislation stage is rendered effective by institutionalizing the units in the country. That is, to implement the laws, made for providing the gender equality into the courts and the institutions that were found in special units and charged with implementing the gender equality norms, is executing the legislation stage, which is first stage of the gender mainstreaming. However, it is necessary to internalize the gender equality at the administrative, legal and political levels. Therefore, the institutionalization stage should be set in motion. In other words, for gender mainstreaming, executing the legislative reforms starts with implementing of them into the institutions. And each institution is responsible for ensuring equality in its respective policy area.

The first stage of legislative reform in Turkey can be evaluated as being highly successful for achieving gender equality mainstream. As mentioned in the thesis, the target of the women organizations is to change the philosophy, which was seen as the most difficult stage. However, it could be achieved with the process of legislation. Moreover, the Civil Code provides the equality between men and women in the family. They have the same equal rights by using the phrase of spouses. Also, the unpaid and invisible women labour in the family became paid and visible through “the participation in acquired property” regime possession.

The most desired changes by the woman groups could be achieved in the penal code, as mentioned in the third chapter of the thesis. Especially, the implementation of the penal code has gained a gender perspective with the

pressure of women's groups. Therefore, the focus of the amendments in the Penal Code has been shifted from family and society to individuality. And women can have sexual rights with the Penal Code. The location of crimes of sexual assault that is interpreted as "Crimes Against Traditions and Public Customs and Crimes Against the Family Order" under the article of "Crimes against Society" was replaced with the article "Crimes against Sexual Crimes" under the "Crimes Against Individual", which purports that the whole mentality of penal code was changed. In this respect the amendment can be evaluated as highly successful as sexual harassment is defined as a crime against the individualities as being rescued from patriarchal norms.

However, according to women platforms and organizations, there are some gaps. For example, the critiques of the legislative process called "remaining demands"; are as follows:

- The term of "Special Measures" is to be put in the Turkish Constitutions
- "honor killings" is to be included in the penal code instead of "killing in the name of custom". Honor killings should be defined as an aggravated homicide to consist of all killings in the name of honor.
- All kinds of discriminations based on the sexual orientation is to be criminalized
- The penalizing of sexual relations of people aged between 15-18 is to be regulated considering of the legal marriageable age.
- The law has to effectively penalize virginity testing under all circumstances.
- The article including "obscenity" has to be amended to define obscenity as child pornography and sexual violence.
- The legal abortion has to be re-extended to 12 week⁶².
- Maternity leave is to be regulated.

⁶² In the first original draft the legal time limit for getting abortion was 12 weeks, however, it was reduced to 10 weeks by the Justice Commission despite the strong lobbying effects by women groups

Although there are still some deficiencies of some articles in penal code mentioned above, that of the term of “special measures” in the Turkish Constitution and deficiency of those law’s implementations within the institutions, it was managed to changed the philosophy of the laws considering gender equality. It is evaluated as a victory of international policy of Turkey, mobilized women’s movement and state stance. However, it can be said that the process of gender mainstreaming has just started by permeating that legislative reforms into the application through the institutions as internalizing the philosophy with a day-to-day work.

Three-Legged Correspondence

(Legislation Process of Gender Mainstreaming in Turkey)

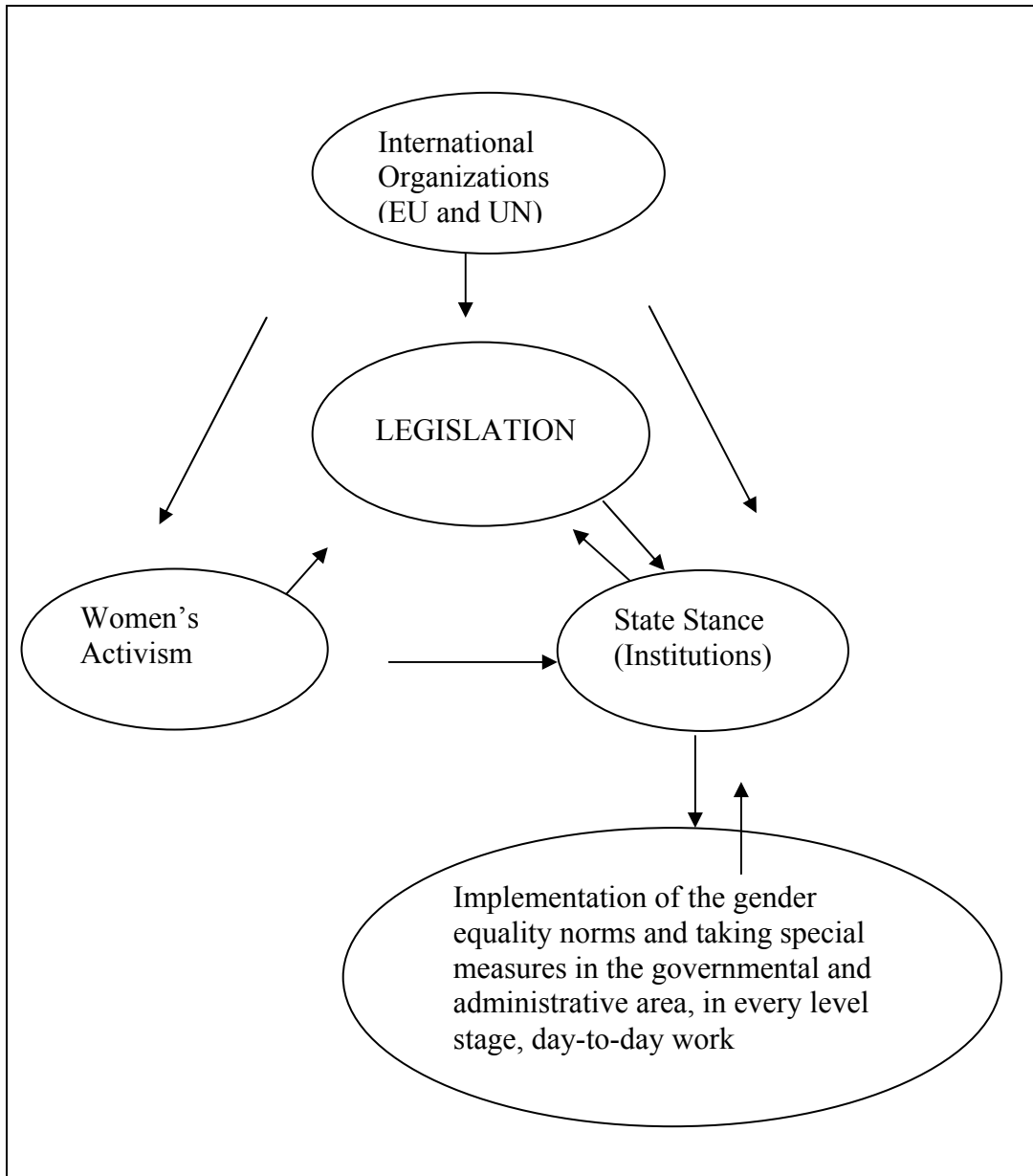


Figure 2. Three-Legged Correspondence

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